“Ordinary English words”: interpreting and translation problems arising in Aboriginal Land Claim and Native Title cases

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Language and Law Conference
Supreme Court, Darwin
26 May 2012
Abstract

In 1984 Justice John Toohey addressed a Supreme Court Judges’ Conference, using the expression ‘ordinary English words’ in connection with ‘common spiritual affiliations’ and this was later published. Although ‘common spiritual affiliations’, an expression of some importance in the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth), may consist of ordinary English words it has been the subject of considerable debate since then. Apart from the difficulties of statutory interpretation it will be shown in this paper how supposedly ordinary English words can raise significant interpreting and translation problems given their differing scope and reference across the Englishes commanded by Aboriginal people, anthropologists, judges and lawyers. This will be illustrated mainly through Aboriginal Land Claim and Native Title cases in the Northern Territory although instances from other jurisdictions will also be invoked. What should become clear is that these findings have significant implications for mutual comprehension not just in the unfolding proceedings but also in the official transcripts. Some suggestions will be advanced as to how mutual comprehension might be enhanced.

Background to ALRA and Native Title

Land claim and native title proceedings vary in territorial scope and in the essential criteria through which the judge will determine a putative land owning group's rights to country.

ALRA

Since 1976 a series of hearings have been held in the Northern Territory of Australia to determine which Aboriginal people should be found to be ‘traditional Aboriginal owners’ of certain areas of land in the Northern Territory. Aboriginal groups may put forward a claim within the terms of the *Aboriginal Land Rights (Northern Territory) Act 1976* (abbreviated henceforward as ALRA) to areas of unalienated Crown land. This is a Federal Act relating specifically to land in the Northern Territory and specifically to ‘traditional Aboriginal owners’.
Native Title

• In other parts of Australia there are other land rights models

• Notable among these is the *Native Title Act 1993 (Cth)* (abbreviated henceforward as NTA).

• There are two crucial differences between the NTA and the ALRA: for the NTA eligible land is *not restricted to areas of unalienated Crown land*, and, there must be *continuity in the tradition* through which connection to country by the putative land owning group frames its native title from the present back to the time of the establishment of British sovereignty over the land in question.

• Different areas - different time frames: Sydney area back to 1788 whereas Darwin area starts at 1825.
<table>
<thead>
<tr>
<th>Ordinary English words</th>
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</thead>
<tbody>
<tr>
<td><strong>SAE form</strong></td>
<td><strong>Aboriginal English semantics</strong></td>
</tr>
<tr>
<td>father</td>
<td>father(s); father’s brother(s)</td>
</tr>
<tr>
<td></td>
<td>biological or classificatory</td>
</tr>
<tr>
<td>kill</td>
<td>hit; strike</td>
</tr>
<tr>
<td>half</td>
<td>portion</td>
</tr>
<tr>
<td>shame</td>
<td>unwanted attention on self</td>
</tr>
<tr>
<td>silly</td>
<td>…</td>
</tr>
<tr>
<td>etc</td>
<td>…</td>
</tr>
</tbody>
</table>
Some phonetic confusions

WITNESS: Yes, over here, Tulket [=Talc Head] way.

MR GRAY: Yes. He is pointing again towards Tulket [=Talc Head] and to the …

(Kenbi Land Claim Transcript p. 385)

In some forms of English used by Aboriginal people it is common enough for ‘h’s to be dropped and for final voiced stops to be devoiced. In fact it is not too uncommon among Anglos. To my knowledge this error in the transcript has never been corrected and while it may seem trivial it would impede someone who was searching for the particular place name, Talc Head, in the machine-readable transcript.
Some phonetic confusions

The next example is a more serious one because the witness and the barrister are at cross purposes: they end up talking about two quite different places. The barrister assisting the Aboriginal Land Commissioner begins cross-examining a witness who had first given evidence back in November 1989. Because of a break in the hearing it is now late March 1990 so after a break of about four months the barrister starts like this:

   ALC BARRISTER: I think you gave us - told us some - some of your story at Ngandjin. Remember that?
   WITNESS: Yes.
   ALC BARRISTER: And I think you said: when you were a little girl you lived there for a little while with your - with your mum and dad?
   WITNESS: Yes.

(Transcript p. 2295)
Some phonetic confusions

In fact the place where the evidence was previously taken was Ngan.giyn. I suspect that when the witness gave this apparently misleading answer (Yes) it was an instance of “gratuitous concurrence” … . The Ngan.giyn/Ngandjin confusion arises partly because of the barrister’s unfamiliarity with spelling conventions used to represent Aboriginal place names.

As it happens there is a quite different place represented in the spelling conventions as Ngandjin. This place is on the east coast of a largish island called Indian Island which forms part of a chain of islands to the west of the mainland. For the land claim proceedings the significant part of the mainland is the Cox Peninsula along the northern coast of which is a place called Ngan.giyn.

## Some phonetic confusions

<table>
<thead>
<tr>
<th></th>
<th>Pronunciation</th>
<th>Conventional spelling</th>
<th>‘Expected’ location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barrister</td>
<td>[ŋandʒin]</td>
<td>??</td>
<td>north coast of Cox Peninsula</td>
</tr>
<tr>
<td>Witness in 11/89</td>
<td>[ŋangiŋ]</td>
<td>Ngan.giyn</td>
<td>north coast of Cox Peninsula</td>
</tr>
<tr>
<td>Witness in 3/90</td>
<td>[ŋandiŋ]</td>
<td>Ngandjin</td>
<td>east coast of Indian Island</td>
</tr>
</tbody>
</table>
Some phonetic confusions

So we now have the witness thinking of a place on Indian Island well off to the west while the barrister has in mind a place somewhat to the north of where the cross-examination is taking place. To add to the confusion the cross-examination is taking place at neither of the places under consideration so that for both participants the places are distant both in time and space. The transcript continues with the barrister and witness talking at cross purposes:

ALC BARRISTER: How - approximately how long did you live at that place [thinking of the place on the north coast of Cox Peninsula viz. Ngan.giyn but pronouncing it as Ngandjin]?
WITNESS: Long time.
ALC BARRISTER: Long time. Many years?
WITNESS: Before the war. Before the war.
ALC BARRISTER: Before the war. Yes. And, how long did you stay there?
WITNESS: We stay for that long time [thinking of the place on the east coast of Indian Island].
ALC BARRISTER: You stayed there for a long time.
WITNESS: Go to Indian Island.
Some phonetic confusions

ALC BARRISTER: And you went across to Indian Island.
WITNESS: We used to footwalk from there.
ALC BARRISTER: Footwalk from Ngandjin ...
WITNESS: Ngandjin to Indian Island.
ALC BARRISTER: Yes. How did you get across the water?
WITNESS: We go land - through the land.
ALC BARRISTER: Oh, you went right round the land. Did you do that very often?
WITNESS: Yes. We walk up and down all the time. (Transcript, p. 2296)

The barrister was quite puzzled about how one would walk from a place that he thought was on the north coast of Cox Peninsula (his ‘Ngandjin’) to a place on Indian Island (the witness’ ‘Ngandjin’). Thus the question: ‘How did you get across the water?’ Once one knows the background it is not too unexpected that the witness should be surprised by the question: from her perspective there is no necessity to get across the water; it is simply a matter of walking from one part of the island to another. This interchange is surely one reason that it is helpful to be at the place when it is being talked about and also shows the need for interpreting assistance.
Interpreting for a key concept: ‘dreaming’

This extract shows how difficult it can be to elicit cultural information through the question-and-answer technique:

NLC BARRISTER: Now, old man, you know that cheeky yam place?
WITNESS: Yes.

NLC BARRISTER: Yes. You got to say anything when you go near that cheeky yam place?
WITNESS: Oh, no. We just got to ... Just pick them up. Cheeky yam. And ... that is really ... yam but cheeky yam is - make you get sick. Go toilet every day.

NLC BARRISTER: Yes. So how do you stop yourself from getting sick?
WITNESS: Oh, well, that is why if you eat cheeky yam, well, that do that to you and me, you know. (Transcript, p. 548)

The barrister is trying to elicit information about Aboriginal beliefs associated with Cheeky Yam … but the witness keeps coming back to talking about the cheeky yam as a natural species.
Interpreting for a key concept: ‘dreaming’

The barrister attempts to change tack but has to be careful not to make the questions too leading in nature for that would weaken the value of the evidence:

NLC BARRISTER: I want to talk about that cheeky yam dreaming. Not - all right. That cheeky yam dreaming I want to talk about.
WITNESS: Oh, there is nothing wrong - there is no danger.
NLC BARRISTER: Yes.
WITNESS: Yes.
(Transcript, p. 548)

At this point the barrister decides to abandon this line of questioning with this witness and switch to someone else. In doing so he tries to emphasize the mythic associations of Cheeky Yam by asking whether one has to talk to this dreaming - as one does with some important and relatively dangerous entities:

NLC BARRISTER: Perhaps I might just ask A___ or B___, then. Thank you. B___, what do you say about that cheeky yam dreaming place? Do you have to say anything to that place or not?
Interpreting for a key concept: ‘dreaming’

WITNESS: Yes.

NLC BARRISTER: Can you tell us what happens, what you have got to do if you have got to do anything?

WITNESS: Well, Larrakia language, you know. (p. 549)

NLC BARRISTER: Yes. What do you say? Well, you can tell us in your language or English if you do not know the Larrakia.

WITNESS: Oh, we sing out and talk to him.

NLC BARRISTER: Yes. And what do you sing out and talk to him about?

WITNESS: We say we got kid here, we got people here, coming and ...

NLC BARRISTER: Yes.

WITNESS: That is all we can say.

NLC BARRISTER: And what happens if you do not do that?
Interpreting for a key concept: ‘dreaming’

WITNESS: Do wrong things?

NLC BARRISTER: What happens?

WITNESS: She might do wrong things.

NLC BARRISTER: She might do wrong things.

WITNESS: Yes.

(Transcript, pp. 548-9)

The first response from the witness is a simple ‘Yes’: accurate (in that one does have to say something at that place) but too brief to be particularly helpful to the inquiry. The barrister tries to elicit some more detail and gets the response: ‘Well, Larrakia language, you know’. Again the response is disappointingly brief. The witness intends to indicate that the dreaming should be addressed in the Larrakia language. The barrister then tries to find out what is said to the dreaming and the response is: ‘Oh, we sing out and talk to him’. This is not greatly informative so the barrister seeks elaboration and gets: ‘We say we got kid here, we got people here, coming and ... That is all we can say’.
Interpreting for a key concept: ‘dreaming’

The next response from the witness is intriguing: ‘Do wrong things?’ The transcriber has used a question mark but it is surely not a question that the witness is putting to the barrister - rather, I would suggest, it is an attempt by the transcriber to capture the rising intonation in the witness’ remark. That rising intonation signals the modality of possibility which is then captured more apparently in her next response which is really just a reiteration of the previous response: She might do wrong things. The pronoun, ‘She’, refers to the Cheeky Yam Dreaming which is regarded as feminine.

Part of the barrister’s task in this extract has been to take rather brief responses from the witness and try to elicit more detail. The witness is not particularly shy, is well informed about the subjects she is being questioned about, but the answers are not as helpful to the inquiry as the barrister might hope. There are at least two reasons for this terseness: the witness assumes a lot more knowledge of her audience than is warranted, and, she may feel on some matters that it is not her right to speak on the matter even though she knows the answer. The barrister must try to adduce evidence that will make sense to the judge without putting words in the witness’s mouth.
Accuracy of written transcripts of proceedings

Transcripts of land claim and native title proceedings bestow as many disadvantages as benefits to Aboriginal witnesses.

On the positive side the transcript provides a record of the witness’ evidence which may assist the judge in reaching a conclusion favourable to that witness.

But on the negative side, the transcript can be misleading, distorting the witness’ words as has been demonstrated for the Lakefield National Park Land Claim (pursued under the Queensland Aboriginal Land Act). (Rigsby 1995 and pers. comm.).
The first example is quoted in Sutton (1994: 120)

Original transcript: Are you claiming Bagaarrmugu? – No, because I am branded with murder. - with murdering Lakefield???

Corrected transcript: Are you claiming Bagaarrmugu? – No, because I blanta [belong to] - belong to Rirrmerr and Lakefield.

i.e. I blanta Rirrmerr = I am part of the Rirrmerr Aboriginal organization.

This was one of the rare occasions when the judicial officer presiding was prepared to 'trust' that an anthropologist representing Aboriginal claimant's interests would not be biased in amending the transcript.
Further examples from the same case

Two more examples of original and corrected transcript from the same case (also quoted in Sutton (1994: 120)) are included to illustrate that, on the one hand, uncorrected transcript can indicate the opposite of what was intended and, on the other hand, present a mismatch which would be comical were it not so important to represent Aboriginal witnesses’ words accurately.

Original transcript: Must have got near the water when he say that word.
Corrected transcript: Not to go near it, the water, when he say that word.

Original transcript: You know, where that nuclear station?
Corrected transcript: Yeah, where that police station?
A judge’s struggle with the ‘exotic’

In the De Rose Hill native title claim (Monaghan 2003: 205 ff) difficulties were encountered when an earlier ethnographer’s ascription of certain territory to one group, Antikirinya, appeared to run counter to the claimant group’s self-identification as Yankuntjatjara. A linguist, Cliff Goddard, was engaged on behalf of the claimants to address this and other issues drawing on his longterm knowledge of the area. “In both written and oral testimony, Goddard explained to the court that Yankuntjatjara and Antikirinya are terms denoting the same speech variety: but while Yankuntjatjara is a Western Desert speech label, Antikirinya is an exonym of Arandic origin. This enabled, Goddard argued, the same people to use the former term to distinguish themselves from Pitjantjatjara speakers to the west or to use the latter term to distinguish themselves from non-Western Desert groups to the east.” (Monaghan 2003: 206). In the end the judge sided with the earlier ethnographer’s position that there were two separate territories, Yankuntjatjara to the west and Antikirinya to the east. This was not merely because of the apparent mismatch between the expert witness’ view and that of the Aboriginal witnesses but particularly because the judge “simply could not accept that the same person could identify as Yankuntjatjara in one context and Antikirinya in another” (Monaghan 2003: 207).
Language ownership

Some key features:
Birthright
Rule governed
Permanent
Non-voluntary
Linkage between a language and its territory
Lack of necessity for language knowledge

Criteria for Credible Evidence (NSWALC 1999:32)
Section 2 re language includes the question
Do any of the native title parties or other native title holders speak their traditional language or use or know words or vocabulary from that language?
[goes on to consider degrees of fluency and how such fluency was acquired]

Tree?!

Consider a hypothetical word in some Australian language: *gabudju*. The dictionary gives its translation equivalent as ‘tree’.

Almost certain to be inaccurate in that the semantic scope of the English word, tree, will not coincide with the semantic scope of *gabudju*.

Much more likely that *gabudju* would be better glossed as ‘woody plant’ and thus would include the English word, shrub. Chances are that in this language there is another word that refers to non-woody plants, where part of the meaning of the English word, succulent, might be covered.
### Terms for land

**Table 5.2: Terminology employed by local Aboriginal people for the wetlands**

<table>
<thead>
<tr>
<th>Water type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>lirri</em></td>
<td>Soaks, in which water is dug up for drinking. Some are permanent (lakes), others are dug up in the hot time (sumplands and damplands).</td>
</tr>
<tr>
<td><em>jila</em></td>
<td>Permanent water sources. In some cases <em>jila</em> have visible surface water (lakes and peat mounds), but many require digging. A <em>jila</em> may be marked by a small depression in the ground. Scrubby t-trees may surround the water. <em>Jila</em> occur in clayey soil from which the white mud <em>kalji</em> is found.</td>
</tr>
<tr>
<td><em>pajalpi</em></td>
<td>Ecosystems surround springs, as permanent water sources found on fringes of coastal mudflats, or inland areas.</td>
</tr>
<tr>
<td><em>wawajangka</em></td>
<td>Fresh water seepages found in mudflats in the intertidal zone and only accessible at low tides.</td>
</tr>
<tr>
<td><em>pirapi</em></td>
<td>Claypans (sumplands) that fill with water after rain, and usually dry up after the rain or as the hot time approaches.</td>
</tr>
</tbody>
</table>

Source: Semeniuk and Semeniuk (1999): 12. The terms in brackets signify the classification that was used by the scientists.
# Terms for land

## Table 5.3: Practical classification, technical classification, and Aboriginal terminology

<table>
<thead>
<tr>
<th>Practical classification</th>
<th>Technical classification</th>
<th>Aboriginal terminology</th>
</tr>
</thead>
<tbody>
<tr>
<td>oasis</td>
<td>lakes, sumplands, playas</td>
<td><em>jila, some pajalpi</em></td>
</tr>
<tr>
<td>pan</td>
<td>sumplands, damplands,</td>
<td><em>lirri, pirapi</em></td>
</tr>
<tr>
<td></td>
<td>playas</td>
<td></td>
</tr>
<tr>
<td>spring</td>
<td>peat mounds</td>
<td><em>pajalpi</em></td>
</tr>
</tbody>
</table>


Terms for land

A common argument or move employed in such hearings can be schematized as having the structure:

Barrister: What is your word for [zone X]?
Witness: N
Barrister: Okay. Now does your country include the N? Do members of other clans need to ask permission to go into N?
The apparent rationale for this procedure is to move onto the witness’ own linguistic ground, as it were, so that answers to questions phrased using a word from their own language will be more accurate and forthcoming than those phrased using the English word as a stimulus.

The Evans corrective

However, it is a procedure full of pitfalls. Leaving aside the possibility that mispronunciations of the word by the barrister may cause confusion, the main problems (which are all interconnected) are:

(a) the assumption that there is a one-to-one correspondence between the English word X and the language word N, so that the exact referential range of N is known on the basis of this one question,
(b) the assumption that the language word N has just a single meaning, which will be summoned up in all contexts in which it is cited,
(c) following from (b) and (c), the difficulties of eliciting an accurate translation, and of knowing exactly what a word means, from a single context, and
(d) the assumption that word N means the same to all speakers of the language
Terms for land: word has single meaning?!

In Kayardild yurda means ‘inside’ and in some contexts also ‘underneath’ e.g. yurda kirrk [yurda nose] ‘nostril’, yurda jara [yurda foot] ‘instep’

The reduplicated form of this term, yurdayurda, when combined with malaa ‘sea’ in the phrase yurdayurda malaa, can mean both ‘inside/way under the sea’, that is, the sea bottom (applying here to the vertical dimension), but also ‘way out to sea’, that is, ‘that part of the sea where you have to go a long way ‘inside’, that is, down, to get to the bottom’ (applying here to a horizontal dimension of mapping area). This can produce all sorts of ambiguities with respect to whether one is discussing ‘out to sea’ or ‘the sea bottom’.

Ordinary English words: peruse; disinterested

Giving an English example this time, the word ‘peruse’ has two meanings: (a) ‘to read through, as with thoroughness or care’ (Macquarie Dictionary), (b) ‘read through in a desultory fashion’. The first meaning is the original, is the only one given in many dictionaries and tends to be used by older speakers. The second meaning has developed in recent decades and tends to be used by younger speakers. Most English speakers are unaware that both meanings exist. Surveys I conduct in my undergraduate semantics class suggest that fewer than 10% are aware of this ambiguity. Note that the commonest context in which this is used – ‘peruse this at your leisure!’ – makes sense with both meanings, so that the commonest ways in which we correct our own meaning representations by noticing discrepancies of context, need not hit us straightway.

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disinterested = impartial OR not interested
Terms for country: balu and birrina

One crucial example, explicitly discussed by Justice Olney in his judgment …, concerns the meanings of the words balu and birrina, both denoting tracts of the sea. What is clear is that these refer to two zones out to sea; what is unclear is (a) exactly what they mean, (b) whether they mean the same to all speakers and (c) whether one of these includes territory lying outside the boundaries of what Croker people claim to have been within their customary tenure.

...

Overall, Justice Olney’s judgment devotes six pages to this problem … /
Terms for country: balu and birrna

It is clear that the semantic issues here are complex, and unfortunately I cannot propose a way out of the conundrum here. There remain too many possibilities – that there is genuine interspeaker variation, or that the relevant semantic dimensions do not directly reflect depth or distance from shore but some other factors which in the particular contexts of the courtroom situation have assumed different salience for different speakers. In a sense this non-closure is predictable. It results from the attempt to investigate a complex semantic domain by unsuitable methods – ethnosemantics by cross examination. As well, it demonstrates tow crucial points for the conduct of native title claims – the pitfalls of introducing decontextualised words from Indigenous languages into cross examination and the need for detailed prior work to be carried out by linguists in the relevant semantic domains, such as geographical terminology.
Evans’ advice

In the Croker case we did not have a level of prior documentation that would allow a presentation of the relevant ethnosemantic categories for the marine zone. This meant that great confusion resulted when barristers attempted to investigate the meanings of particular key words by linguistically naïve methods of cross examination.

…

The need for consciousness raising by linguists here is complicated by a feeling, among the legal profession as among the general public, that such extra commentary and interpretation is unnecessary, whereas it is obvious in the case of interpretation from a language like Iwaidja, Arrernte or Kayardild. This does not diminish the seriousness of the problem, and I do not believe the native title process will lead to equitable legal judgments until it is solved. [my emphasis]
interlude for attempt to show a portion of a DVD

Role play involving MJW as lawyer 'questioning' Tom Pauling and 'getting assistance' from Michael Cooke
Can we have a spelling for that, please?!

… any problematic words or passages were noted during proceedings and at close of business I went over these with the relevant witness to obtain an accurate record. The next morning the glossary resulting from these checks would be tabled as an exhibit. … This was the first known use of this approach in a native title claim and Justice Olney, at the end of the Croker court session, commented, ‘The production of the glossaries has been a very useful and progressive step in this type of hearing’

Evans 2002: 58; see also 56-59
Improving the delivery of justice in such proceedings?

• more accounts of problematic issues by legal practitioners e.g. Gray, McIntyre, Mildren, Neate, Ritter & Flanagan

• better understanding of differences between Aboriginal English and Standard Australian English (e.g. Eades 1992)

• prior detailed examination of key concepts

• transcripts to be checked by anthropologist/linguist - with appropriate safeguards e.g. the right of other parties to the matter to put forward their own specialist(s) to (spot-)check the modified transcript
References


Monaghan, Paul 2003 *Laying down the country: Norman B. Tindale and the linguistic construction of the north-west of South Australia*. PhD diss, University of Adelaide.


References


