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Autonomy and the intercultural: interpreting the history of Australian Aboriginal water management in the Roper River catchment, Northern Territory

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Abstract

Integrated discussions of the multi-valency of objects and the use and appropriation of natural resources in colonial contexts are uncommon. By combining previously scattered historical, legal, and ethnographic sources, this paper examines Aboriginal weir construction along an Australian river, focusing on the repeated re-purposing, re-contextualisation and re-interpretation of the Roper River weirs over time by both Aboriginal and non-Aboriginal protagonists. Through that process, it contributes novel insights to contemporary theoretical debates about intercultural colonial relations and about the relative autonomy of indigenous peoples within colonising societies. In particular, the paper highlights the historical evolution of constraints on local autonomy in colonial contexts and on individual agency in constituting and/or reconfiguring intercultural relations. Previously little known, these temporary water regulation structures are now the best historically documented instance of Aboriginal water management on the Australian continent, enabling a diverse array of interpretations and critical evaluation of key contemporary social theoretical concepts.

Introduction

A productive avenue of recent research has involved analyses of the meanings and values assigned to landscapes (Bender 1993; Bird Rose 1996; Strang 1997) and to material elements within those landscapes, particularly water (Barber 2005; Barber and Jackson 2011; Morphy and Morphy 2006; Strang 2004; Strang 2005; Strang 2009). Such analyses of multiple meanings overlap with studies examining the multi-valency of both objects and actions in art (Morphy 1991; Munn 1973) and ritual (Morphy 1984; Rappaport 1999; Turner

1967), but despite the potential productivity of this approach (Strang 2009), accounts of contests about the use and appropriation of natural resources do not often take the multi-valency of everyday objects created by humans as a central component of the analysis, tending instead to stress their material value in capitalist economic systems. In this paper we describe the history of Aboriginal weir³ construction in the narrow braided channels of the upper reaches of the Roper River, identifying multiple purposes and interpretations ascribed to these simple temporary structures. The multi-valency we identify is not a deliberate and explicit construct of formally ascribed and related meanings - no evidence of ritual or religious associations with respect to the weirs was identified. Rather we use the term to refer to the consequences of multiple actors engaging with the structures in multiple contexts across time and space, engagements which in turn resulted in the structures accumulating multiple purposes, interpretations, justifications, and effects.

The material enables further consideration of appropriate theoretical lenses for analysing ongoing colonial processes in settler societies, and the primary focus for that discussion is two recent formulations emerging from related field contexts: relative autonomy and the intercultural. Both are intended to interrogate and illuminate the contemporary position of indigenous people with respect to the surrounding colonising society, in this case, Australia, and are the subject of current debate (Merlan 2013; Morphy and Morphy 2013b). Our analysis makes explicit some of the implicit terms of that theoretical debate and extends it in three ways: historically, by evaluating case study evidence across more than a century of colonial interaction; politically, by concentrating attention on contestation over the management and ownership of natural resources; and theoretically, by considering the relative strengths, relationships, and potential interdependencies between the two formulations in a context where both can be productively deployed. Before turning to the case study in detail, we will briefly outline these formulations and note some key aspects of the wider contemporary context for the management and ownership of natural resources by indigenous peoples.

The term 'intercultural' has recently been used and theorised by Merlan, an ethnographer and linguist with long-standing experience of the upper Roper catchment (Merlan 1978; Merlan 1981; Merlan 1982; Merlan 1987; Merlan 1993; Merlan 1996), and she first deployed the term in the context of writings about the town of Katherine, 100km to the north of our study site (Merlan 1998). In a later theoretical reflection (Merlan 2005), Merlan noted that in this work the 'use of the word remained more indicative than examined' and was primarily motivated by the desire to keep 'engagement between' Aboriginal and non-Aboriginal people in view at all times, particularly given the town context and the implications of such engagements for social change. Rather than the intercultural being a bridge or relationship across bounded cultures which constrains recognition and commonality, Merlan identifies a sense of the term that "is the 'inter-' of categories, understandings, modes of practical action, as reproduced and reshaped in interaction, interrelationship and event - sometimes in engagement with whites - rather than pre-given" (Merlan 2005: 170). Her 2005 exploration goes on to consider the notion in relation to structural history and ideas from Bourdieu, Voloshinov and Bakhtin, but it is sufficient here to note the original emphasis on modes of practical (inter)action, interrelation and event, and that commentators saw the concept as useful in prioritising relations within a single sociocultural field rather than across bounded cultures (Hinkson and Smith 2005).

Developed to account for ongoing processes in a contemporary regional town, we find the term productive in analysing past relations between Aboriginal people and European Australians in a pastoral context Merlan has also studied. In our analysis, the weirs emerge as a unique Aboriginal construction, but from the early twentieth century onwards their creation, purposes, and interpretations take on a distinctively collaborative and relational cast. The intercultural concept appears useful in marking the potential complexity of colonial resource contests frequently (but nevertheless often accurately) depicted as crudely divergent and oppositional.

However, the recent popularity and apparent utility of the intercultural has also been accompanied by some critique of its applicability and implications for related Aboriginal contexts and for contemporary government policy (Morphy and Morphy 2013a; Morphy and Morphy 2013b). Morphy and Morphy describe the continuing independent trajectory of Aboriginal life for people in Arnhem Land and suggest that the 'intercultural' was found theoretically and politically wanting when a set of more intrusive and interventionist government policies known as the Intervention was initiated by the Australian Federal government (Altman and Hinkson 2007). Morphy and Morphy follow earlier French theorists (Althusser 1969; Godelier 1977), proffering 'relative autonomy' as a necessary apposition that provides a stronger basis for analysing both the historical process of Aboriginal peoples' incorporation by the Australian state and the ongoing durability of Aboriginal agency, social relations and systems of value within that process. The autonomy suggested by such durability is real, but must nevertheless be qualified or relativised because "adjacent societies that interact over periods of time inevitably influence each other" (Morphy and Morphy 2013a:178) and these influences then have their own internal ramifications. From this perspective, a truly effective understanding of (intercultural) relationality is primarily founded on close attention to the differences brought to that relationship by the respective parties (Morphy 2013b:639). In the context of our case study, relative autonomy appears particularly productive in concentrating analytical attention on the way in which local Aboriginal people continued weir construction despite encountering resistance from colonising forces, yet also that this apparent autonomy was subject to a range of constraints - the location, frequency, and justification for the weirs varied based on the colonial context.

Our case study in the upper Roper is geographically adjacent to both Katherine and Arnhem Land and in some respects lies between those regions in terms of its historical and cultural trajectory, so it is perhaps unsurprising that formulations derived from both of these contexts appear useful. In what follows, we do not attempt to provide a full account of either

intercultural relations or relative Aboriginal autonomy in the area. Rather, we focus on how the history and multiple interpretations of the weirs reflect the relative strengths of two different social theoretical formulations and the potential for interactions and interdependencies between them. The intercultural is useful in foregrounding both the diverse purposes and meanings assigned to the structures and the unusual degree of collaboration between Aboriginal and non-Aboriginal people in weir construction and subsequent justification. Yet the existence of such collaboration is also suggestive of the degree to which intercultural relations are themselves both a product of individual and collective autonomy and may be undertaken with the maintenance of that autonomy as a major goal. In colonial contexts, assertions of autonomy and legitimacy are often intimately tied to claims to the ownership and ongoing management control of natural resources, and it is claims to water that are the major focus here. Therefore, before presenting the case, it is useful to note some key aspects of the wider context for water ownership and management by indigenous peoples, particularly those in Australia.

Permanent water is crucial to all human settlement, and in colonial processes, water sources were often sites of major conflict as well as more subtle forms of exclusion and appropriation. In recent decades, there has been increasing scholarly interest in the impact of water development processes on indigenous and local communities, largely because the transfer of water rights has been the major driver in neoliberal global water governance transformations (Bruns and Meinzen–Dick 2005). International studies document the difficulties experienced by indigenous and local communities as they attempt to have their rights to assert control of their waterscapes recognized in the face of rapidly changing water governance institutions (Boelens, et al. 2011; Johnston, et al. 2012; World Water Council 2003).

The way in which contemporary Australia is positioned in this struggle for control of water, and is therefore subject to varying colonial, postcolonial, neoliberal and/or neocolonial

influences (Loomba 2005) is a complex question. In this paper we treat colonial processes as an ongoing reality for contemporary Aboriginal lives rather than as a phenomenon of the past. Nevertheless, as the content of the paper itself demonstrates, any depiction of colonial processes as unchanged since the 18th century is rendered deeply problematic by the changing historical and economic context of Australian life, and such historical shifts are evident with respect to water resources. -Reflecting British legal traditions and colonial jurisdictions elsewhere, Australian governments have prioritised irrigation and urban supply, but the associated water governance regimes have moved from the initial imposition of British water rights law and doctrine to the adoption and promotion of neoliberal commodification and marketization schemes. In either case, transparently inequitable results have remained a feature of water law and policy, particularly with respect to Aboriginal interests (Jackson 2011; Jackson and Langton 2012; Jackson, et al. 2012; National Water Commission 2011). Nevertheless, Aboriginal people maintain customary systems of water governance (Jackson and Altman 2009; NAILSMA and UNU-IAS 2008; Strang 2009), particularly in the north where significant land areas are under Aboriginal control and the contemporary Aboriginal ranger and land management movement continues to grow (Altman and Kerins 2012). This situation has obliged water resource agencies to more extensively consider Aboriginal perspectives, rights and interests, and the work underpinning this paper was partially funded by government programs designed to achieve this. The outcomes directly influenced and enabled formal government recognition of Aboriginal water management practices along the Roper River (Jackson and Barber 2013; Northern Territory Government 2011). This combination of initial appropriation, legal imposition, state-administered allocation, neoliberal commodification, and limited recognition of Aboriginal interests in water resources reflects the complex interplay of colonial, neoliberal and postcolonial influences at work in contemporary Australian circumstances more generally.

Lastly, the Roper case also contributes to ongoing debates about indigenous peoples generally, and Aboriginal people in particular, acting as purposeful environmental managers

and as agents of environmental change (Flannery 2002; Gammage 2011). These debates span a range of disciplinary fields beyond anthropology, notably archaeology, human ecology, and environmental history, and in the Australian case are also implicated in older anthropological and wider public controversies about the existence of Aboriginal territoriality, the myth of the 'noble savage', and through them, the justification for British colonisation. Archaeological and historical evidence for Aboriginal manipulation of water flows has been located elsewhere in Australia (Humphries 2007; Lourandos 1980; McNiven and Bell 2010), but the Roper now represents a major and distinctive new instance with an extensive degree of historical and legal documentation and the potential for long-term, landscape-scale effects. These effects would require further research to understand (and any further account of them would necessarily contain an element of speculation), but our focus on historical and cultural interpretation in this paper should not diminish the potentially significant archaeological and human ecological implications of the Roper weirs.

Study site, methods and sources

The monsoonal climate of tropical northern Australia results in a highly variable pattern of river flow: water is abundant in the wet season, but scarce during the mid-late dry season when many rivers shrink to non-flowing pools. Therefore, permanent aquifer-fed rivers such as the Roper (Figure 1) are of considerable ecological and social significance (Pusey 2011). The particularly flat topography of the upper Roper causes the river to braid into smaller channels that are relatively easy for Aboriginal people to temporarily block with small obstructions. The weirs consisted of a framework of wooden poles driven into the mud of the riverbed and then lined with paperbark. They were built in the middle of the tropical dry season, largely to sustain shallow lagoons during the water-scarce late dry season, but also to saturate the soil and divert the river flow down alternative channels. When used appropriately, the result was a significant increase the amount of aquatic and associated riparian habitat available.

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The primary Aboriginal language groups in the focal area (Fig 2) are the Mangarrayi (associated with Jilkminggan and Elsey Station homestead) and the Yangman (associated with the town area of Mataranka). Despite considerable colonial violence (Merlan 1978), they have been able to continuously occupy at least of a proportion of their traditional lands. Currently, Aboriginal people represent approximately 70% of the upper catchment population of approximately 900-1000. Although subsistence hunting has declined due to the presence of marketed food sources and transport and access restrictions (Merlan 1978), hunting remains an important supplement to purchased food.

Elsey Station was the setting for a highly successful early pastoral memoir, 'We of the Never Never' (Gunn 2003 [1908]) that embedded the area and its inhabitants in the national consciousness. Now in Aboriginal hands as a consequence of a land rights and restitution scheme, the station is approximately 7,500 km² in its present configuration, but in the past it was much larger, incorporating downstream stations as well as what are now Mataranka and the Elsey National Park. It was first stocked in the 1880s (Merlan 1978) and the national profile derived from Gunn's memoir has been further augmented by newspaper articles, books, films, national museum exhibits, and a royal visit.

The research data was obtained through a combination of archival searches, field interviews, and participant observation. Seniority, knowledge of the country, a long term residential history, and/or a recent profile in speaking about water issues were the primary criteria for research participation, and 18 Aboriginal people and one non- Aboriginal former pastoralist were formally interviewed across 5 separate field trips. The rich archival sources included several published accounts: Gunn (2003[1908]); the memoir of an Aboriginal woman, Buludja as written and edited by Elsey Station's then owner (Thonemann 1949); a book of recollections by local Aboriginal elders (Merlan 1996) and newspaper articles from the period (The Northern Standard 1946). Unpublished sources included: government documents (NAA F1 1946/406); private notes and correspondence from Elsey Station (NTAS NTRS 298);

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court records (NTAS and Supreme Court of the Northern Territory E101/P9) and photographs. Further background information was provided by numerous works by Merlan (Merlan 1978; Merlan 1981; Merlan 1982; Merlan 1987) and land claim reports (Commonwealth of Australia 1990; Commonwealth of Australia 1997).

Results

Chronological outline

The significant actors in the weir story are listed in Table 1. The early sources suggest that weir construction was an ancient subsistence practice that considerably predated European colonisation. Following the establishment of Eley Station, colonial pastoralists saw that the weirs diverted water to areas of hard ground where cattle could more easily drink without getting bogged, thereby reducing cattle losses. The two key pastoral figures at Eley during the major period of contestation about the weirs were Harold Thonemann and Harold Giles. Thonemann owned Eley but resided 3000km away in Melbourne and from the 1920s Giles acted as manager handling day-to-day operations. Complaints about the 'blackfellows dam' (as it was referred to by government engineers) emerged during the 1930s and 1940s from the owner of the downstream Roper Valley Station, Thomas Holt. These led to government investigations, police actions, and subsequent attempts by Eley Station to document, legitimise, and defend the practice. The Australian colonies had inherited principles of British common and riparian law which gave landholders conditional rights to surface water contiguous with and adjoining their land (Clark and Renard 1972), and so this defence included gaining permits from the Administrator of the Northern Territory under a 1938 Water Ordinance. Holt took the matter to court in 1946, and the judge (Justice Wells) found in his favour and banned the practice. Despite the ban, Aboriginal cattle workers continued to construct similar structures elsewhere in the area until the 1970s, particularly on the adjacent Moroak Station. The Moroak weirs were designed to foster pasture growth and were built with the assent and cooperation of the pastoral owners, the MacFarlane family. Through Aboriginal land claims processes, Eley Station reverted to full Aboriginal control in the

Table 1. Key actors in the story of the Roper River weirs.

Name	Description
Elsy (Jungle) Dick	Primary Aboriginal spokesperson for and owner of the Red Lily lagoon area. Involved in preparations for the 1946 case, but not called as a witness.
Harold Thonemann	Non-resident owner of Elsey Station in early to mid-twentieth century. Co-defendant in the 1946 case.
Harold Giles	Long-term operational manager of Elsey Station. Co-defendant in the 1946 case.
Thomas Holt	Owner of Roper Valley Station. Plaintiff in the 1946 case.
Administrator of the Northern Territory	Federal government representative with executive powers in the Northern Territory. Requested investigations of and issued water permits for the Roper weirs.
Justice Wells	Judge in the 1946 case.
Sandy	Aboriginal cattleman on Elsey and Roper Valley stations. Witness in the 1946 case.
Dagan	Aboriginal cattleman on Elsey. Witness in 1946 case.
Joseph Lyons	Lawyer acting for the defendants in the 1946 case.
Kevin Ward	Lawyer acting for the plaintiff in the 1946 case.
Constables Mannion and Abbott	Policemen in the upper Roper during the 1930s and 1940s.
Buludja	Mangarrayi woman who was the subject of a biographical work (Thonemann 1949).
Hamish MacFarlane	Son of original lessee of Moroak Station, where weirs were constructed from the 1950s until the late 1970s..
Mary Nurniyn	Daughter of Elsey Dick, whose version of the weir story appears in Merlan (1996).
Sheila Conway	Contemporary senior Mangarrayi spokesperson. Her version of the weir story appears in Merlan (1996) and was retold to the authors in 2011.

1990s, and in 2010 the weirs were revived again by Aboriginal leaders on Elsey for a new purpose, erosion control.

In presenting and analysing the weir material, we retain some of the above chronological structure, particularly in the material following the 1946 court case, but prioritise the presentation of multiple purposes and interpretations, each headlined by a relevant phrase. Key documents from the 1946 case include letters between Thonemann and his legal counsel, interviews with Aboriginal people (including Elsey Dick, owner of the area and a key constructor of the weirs), and excerpts from the court transcript and the judgement from the judge, Justice Wells. It is crucial to note the empirical significance of this newly located material, particularly the interviews and testimony of Aboriginal people. The colonial frontier in this part of Australia is the late 19th century, meaning that senior people speaking during the 1930s were effectively only a generation removed from pre-colonial times, something they make clear in statements legitimating the ancestry of the weir building practice. Some of the interpretations are from documents from the period, some are retrospective, either in written accounts or in comments from living research participants, and they come from both Aboriginal and non-Aboriginal protagonists in the story. As a combined set, they represent the most detailed and extensive historical and legal evidence yet found about an instance of pre-colonial Aboriginal water management that endured long after initial colonisation.

'Ensuring a plentiful larder': weirs as a subsistence strategy

The first interpretation of the weirs relates to their original purpose – providing food for the Aboriginal inhabitants of the area. The most important site for the weirs in the early colonial period was near Red Lily Lagoon (Figure 3) and the earliest historical source, Gunn's 1908 memoir, describes the lagoons as 'wide-spreading and shallow - great sheets of water with tall reeds and rushes about them' (Gunn 2003[1908]: 100-101). Importantly, Gunn also notes how underlying rock formations make a 'duck under', a place where the river bed rises to be sufficiently shallow that a weir diversion can be created with relatively small amounts of labour:

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Being so shallow and wide-spreading, the lagoons would dry up early in the "dry" were it not that the blacks are able to refill them at will from the river; for here the Roper indulges in a third "duck-under," so curious that with a few logs and sheets of bark the blacks can block the way of its waters and overflow them into the lagoons thereby ensuring a plentiful larder to hosts of wild fowl and, incidentally, to themselves.

(Gunn 2003[1908]: 100-101)

The emphasis on the weirs as a subsistence strategy was reconfirmed in later accounts from Aboriginal people themselves provided in the shadow of the impending court case, as the answers given by Elsey (Jungle) Dick in 1945-1946 demonstrate:

Q⁴: How you catch fish?

Ans: Oh, we stop water, make [it] go another channel. [When] water dry, we kill fish.

Q: Red Lily Billabong go dry?

Ans: Yes. Suppose no more dam, we put paperbark and mud. Keep water full. Then plenty goose and duck come.

Elsey Dick, 1945-6

(NTAS NTRS 298)

Other Aboriginal people (including the two case witnesses Sandy and Dagan) also attested to the subsistence purpose of the weirs. Justice Wells confirmed the court's recognition of this purpose in his final judgement, noting that the weirs were:

for the purpose, from the point of view of the natives, of maintaining during the dry season the level of the water in the billabong and conserving therein supplies of fish, and attracting to it quantities of ducks and geese which the natives catch and use for food purposes.

(NAA F1 1946/406).

Media reports of the case (The Northern Standard 1946) highlighted the subsistence purpose and Thonemann's subsequent book (1949:151) provided further evidence of its ancestry. The combined effect of these assertions from generations of Aboriginal people, their supporters, institutional legal actors, and popular media highlights the level of recognition achieved by this original purpose of the weirs. Without that purpose, the subsequent additional purposes and interpretations detailed below would not have arisen. Yet these ancillary purposes at times came to dominate wider perceptions of the weirs.

'They did it for cattle': weirs as a pastoral watering strategy

Gunn briefly describes the weirs, but also encounters with bogged and dying cattle 'up to their necks in slime and awfulness' (Gunn 2003[1908]:98). The key pastoral protagonist in her narrative attributes the bogging to the limited available drinking water caused by the poor wet season, and pastoralists relied heavily on Aboriginal knowledge and labour to manage such losses. One strategy was to have Aboriginal stockworkers conduct regular patrols and rescue animals found in difficulty. Another was to improve access to water using the weir technique. Giles recalled that in his early years as Elsey manager the impetus to use the weirs as a loss prevention strategy came from Aboriginal people themselves – he had initially resisted the idea but they 'kept pestering' him until he allowed them to proceed with construction (NTAS and Supreme Court of the Northern Territory).⁵ Pulling bogged cattle out of mud in the hotter months was unlikely to have been a pleasurable activity for Aboriginal stock-workers, giving them an additional motivation to build the weirs beyond any subsistence return. Justice Wells acknowledged the pastoral purpose alongside the subsistence one, but attributed pastoral motivations to the (non-Aboriginal) defendants alone, effectively erasing any importance of it to Aboriginal inhabitants. Yet the pastoral value of the weirs is clearly remembered by living Aboriginal people:

Put timber in the river, slow 'im down that water. If no dam, Red Lily go dry. Those cattle come down and get bogged. Block that water [and] you keep them cattle there.

JD

They blocked from Pocket. Just at the corner, right at the end. And water comes into Red Lily. They did it for cattle, and also for fish.

MR

Recollections of the pastoral purpose of the weirs are strong enough to have dominated some recent local interpretations of them, both in terms of the relationship to subsistence and more general Aboriginal initiative in their construction. Merlan's 1996 introduction to Mary Nurniyn's version of the weir story describes Elsey Dick as damming the river 'on behalf of Elsey Station' and that he 'was asked to do this by station manager Harold Giles, both to provide water in these places for the cattle, and to prevent them from bogging along the main river' (Merlan 1996: 45-47). Although not incompatible with the initiative coming from Giles, Mary's version prioritises the role of her father Elsey Dick in events, as well as emphasising cattle welfare as the objective:

That whitefella came, Mr Holt, they used to call him 'rock wallaby'. He came and asked my father.

'Why are you blocking off the water?'

My father said, 'I'm blocking off the water for our cattle.'

'I want the water to flow downstream too,' he [Holt] said.

[Elsy Dick said]: 'Big Red Lily and Little Red Lily should fill up so it doesn't get muddy. So the cattle don't bog.'

[Holt] just came and asked my father. He asked your two grannies.⁶ He asked them and they knocked him back. 'We block the water for our cattle.' He went back to Roper Valley.

(Merlan 1996: 46-47)

Recent local accounts of the practice that emphasised the pastoral purpose of the weirs and Giles' role in them clearly influenced Merlan's own interpretation of the structures. The potential divergences from the archival record raise complex questions of local memory and history that bear considerable further investigation (Merlan 1978; Morphy and Morphy 1984). However, what is important to note here for current purposes is that a demonstrably autonomous Aboriginal tradition had now been re-purposed and reinterpreted as a colonial collaboration and, in some readings, as primarily an initiative of the colonisers. Yet the continuation of the practice through the colonial era combined with its growing visibility as a subject of intercultural and colonial pastoral relations enabled the emergence of further interpretations.

'[It] should be commended...rather than discouraged': weirs as a signpost of future water development

For many decades in the 20th century, improved water control, storage and distribution was viewed as an essential precursor to economic development and colonial settlement schemes, including in northern Australia (Davidson 1965; Powell 2000). Government employees became directly involved in the weir dispute in the 1930s, particularly following the creation of the 1938 Water Ordinance. Various inspections were made and documented between 1937 and 1945, mostly by police, but also by government water engineers and military personnel. In keeping with prevailing attitudes to water control and development, government officials considered the weirs a useful way of conserving water for grazing and appear to have been generally supportive of the practice. They noted variously that: 'the damming of Red Lily and the Roper River, if done systematically, can be of great benefit to both Eley and Stations below'; that 'the weirs were conserving water for stations below...rather than reducing the flow' (the opposite effect from the one claimed by Holt); that the whole Roper Valley 'requires a considerable amount of investigation...with a view to utilising the water' and that the 'the little work' that Eley were doing 'should be commended

upon and encouraged rather than discouraged' (NAA F1 1946/406). Perhaps curiously given wider colonial attitudes to Aboriginal people, for government officials prior to 1946, the 'blackfellows dam' was not a relic of a fading traditional past, but rather a signpost to more substantial future water developments. By the late 1930s, the wider colonial and intercultural context surrounding these Aboriginal constructions had begun to evolve rapidly, and this in turn led to other government employees expressing perspectives regarding the weirs.

'Only a test' in 'a domestic matter': weirs and police (in)action

Police relationships with local Aboriginal populations across Australia during the 19th and 20th century were generally hostile, particularly with regard Aboriginal activities that might threaten settler land use and/or potentially be illegal under Australian law (Reynolds 2013; Richards 2008). Holt's continued complaints about the weirs meant that police undertook multiple inspections in the decade prior to the case, and on at least two occasions (1938 and 1945) they fully or partially removed the weirs, suggesting hostility to the practice. However despite appearances, the wider archival context suggests something other than an intrusive police response to the issue, as on both occasions the police were ordered to undertake the action by their superiors. In later correspondence, Giles described the 1938 action (Figure 4 and 5) as 'only a test' ordered by the Administrator to see what would happen, and in 1945, the documentation (Figure 6) and partial removal of the weir by police was with the cooperation of Elsey in order to ensure compliance with the terms of the Administrator's permit. A government letter following this action reported that the police told Holt he should negotiate directly with Giles as 'the damming of the Roper River between his station and Elsey is a domestic matter' (NAA F1 1946/406). In preparing the subsequent legal case, Thonemann commented that the police were 'favourable' towards Elsey's position (NTAS NTRS 298). Counter-intuitively in this colonial context, the police chose to be relatively passive in the weir dispute, following orders rather than using the weirs as a pretext for intrusive intervention in Aboriginal lives. Their minimisation of the weirs as 'domestic' contrasted sharply with the perspective of the water engineers who saw them as a signpost

to future development. However the police interpretation, which had the effect of minimising state constraints on the collaborative Aboriginal-pastoral weir construction on Elosey, would not become a definitive or lasting one.

'Blacks water rights': the weirs requiring legal recognition of Aboriginal custom

In light of Australia's relatively late recognition of indigenous water rights, perhaps the most striking interpretation of the weirs to emerge during the main period of public contestation in the 1930s and 1940s was provided by the Elosey lessee, Thonemann. Both he and Giles had an economic interest in avoiding stock losses and maximising the efficiency of labour, but in justifying the continued practice to colonial authorities, Thonemann focused heavily on its ancestral origins and ongoing enactment by Aboriginal people. This is in stark contrast to prevailing pastoral attitudes at the time. The earliest document by him is a 1937 interview transcript in which he encourages Elosey Dick to trace a 'genealogy' of former Elosey Station owners and managers to locate the weirs in pre-colonial times, then asks him why the 'dams' are built:

Thonemann: Why dam the Red Lily?

Dick: Him [the water] run wrong way right up [to] Roper Bar.⁷

Thonemann: When you dam him which way him run?

Dick: Along Wagon Lagoon.

Thonemann: Why you want him run along Wagon Lagoon?

Dick: Make water run along Lagoon catchum fish.

Thonemann: You catchum fish long Wagon Lagoon and long other holes?

Dick: Yes. Catchum fish when him dry.

Thonemann: Your father catchum fish along Wagon lagoon?

Dick: Yes.

Thonemann: What name your father?

Dick: Old Goggle Eye.

Thonemann: Your father dam Red Lily?

Dick: Yes all about boy long time dam Red Lily to catchum fish.

(NTAS NTRS 298)

The weirs are for subsistence ('catchum fish') and were built collaboratively ('all about boy') over 'long time'. Dick goes on to say that the dam held a 'lot of water' but was not impermeable and was vulnerable to heavy rain ('many a time got [to] all day mendum'). Most noteworthy is the title given by Thonemann to this interview: 'Blacks water rights'. In what may be the first historical reference to it yet found in Australia, Thonemann frames the issue of Aboriginal river regulation as a 'water right' years before the 1946 legal case and almost five decades before Aboriginal legal rights to inland waters were recognised by Australian common law (Jackson, et al. 2012). He retains this interpretation in a June 1946 letter to his legal counsel, claiming that 'the dam on this site has been erected by the blacks from time immemorial...[and] we claim on their behalf these ancient rights'. He further goes on to say that:

although we have asked permission [via government permit] to dam, that should not invalidate their claim and it may be necessary to join (Jungle) Dick in the case...It seems to me most important to stress the ancient rights of the blacks. Each year they desire to dam the river and only await our permission [original emphasis].

(NTAS NTRS 298)

In Thonemann's eyes, these 'ancient rights' are neither invalidated by statutory water law (Elsley's permits under the 1938 Ordinance) or by the permissions provided by the station owners and he presumes that Dick, rather than the Elsey lessee and manager, would be the primary defendant in any legal action. He interprets the weirs as a matter of the recognition of ancient customary rights by British-derived common law, rather than a (domestic) riparian

dispute between two non-Aboriginal pastoralists. For his part, Justice Wells endorsed the ancestral nature of the practice in his final judgement, presaging the language of native title recognition that would require another four decades and an activist High Court of Australia to ultimately create:

The evidence shows that the practice of damming the river by the natives for their own purposes had been going on for many years; that it was, in fact, an "old fellow black fellow" custom, or, to put it in legal terms, had been in existence from time immemorial. (NAA F1 1946/406)

Thonemann's reference to 'ancient rights' suggests his personal recognition of the prior existence of an alternative and autonomous system of customary law and Wells' formulation explicitly identifies 'native custom' from 'time immemorial'. Yet although identifiable, such recognition, and the coexistence it implies, remained stillborn as the issue was overtaken by legal argument and interpretation which focused the case on the specific events of 1945. Therefore, although he acknowledged the traditional practice, Justice Wells did not ultimately conceptualise the matter in terms of ancient Aboriginal rights, leading him to a very different interpretation of the weirs from Thonemann's. At the height of wider cross-cultural and colonial recognition of the Aboriginal weir building practice, the constraints which relativised the Aboriginal autonomy on which it had been based were about to emerge in their strongest form.

'Unlawful at common law': weirs as riparian violation

Holt took out an injunction against further damming in 1946, and a letter to Thonemann from his lawyer Lyons regarding that injunction shows how the case moved from the 'ancient rights' of the Aboriginal population to a pastoral and riparian dispute (NTAS NTRS 298). Now focused entirely on events in 1945, the issues outlined by Lyons were: the factual question of whether Holt's downstream cattle losses in 1945 were due to the weirs (as Holt claimed) or to poor feed availability and his failure to employ Aboriginal labour to extract bogged cattle (as Eley claimed); the validity of the permits provided to Eley by the Administrator; and

whether the dams constituted illegal 'obstructions' rather than legal 'diversions'. Diversions which returned water to the river 'substantially undiminished in volume' were allowed, obstructions were not. This list shows that discussion of Aboriginal water rights had been eclipsed and the power of the court to regulate, control, or outlaw the ancient Aboriginal practice was not questioned. Furthermore, if the legitimacy of contemporary permits was the issue, then evidence about past practices by Aboriginal people would not be needed. Indeed, when an Aboriginal witness, Dagan, gave an unsolicited response about activities 'before the white man', it drew an objection from the opposing counsel, Ward:

MR. LYONS: What other blackfellow do alonga jungle?

DAGAN: Him block in the water before white man.

MR.WARD Objects.

MR LYONS: What him bin do there, other blackfellow?

DAGAN: Do that for fish. Makem plenty water for duck.

(NTAS and Supreme Court of the Northern Territory E101/P9)

The subsequent Aboriginal witness called Sandy was only asked some preliminary questions about traditional fishing techniques, then a series of questions about his observations in 1945. Such restricted testimony sharply contrasts with Thonemann's initial approach which presumed Elsey Dick would be the main defendant – not only was he not a defendant, he was not even called as a witness. Despite the potential impact on Aboriginal water management and water rights, the case was now entirely focused on a different set of issues. The final judgement reflects this, with Justice Wells concluding that: 1) rather than acting of their own volition, the 'natives' had been acting as agents for the Elsey managers in constructing the 1945 weirs 2) the managers were therefore answerable for the weirs' impacts 3) evaporation of the lagoons created by the weirs diminished downstream flow, rendering such diversions 'unlawful at common law' 4) the permits provided by the

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Administrator under the 1938 Water Ordinance were invalid for technical reasons, and 5) the Elsey defendants were liable for damages and legal costs (NAA F1 1946/406).

It was a comprehensive defeat, both for Elsey Station and for the recognition of the autonomous Aboriginal custom and ongoing intercultural pastoral collaboration Elsey had advocated. Compounding the loss, the judge directed that any future weirs would require permits through a government process that now needed considerable political and regulatory amendment before it could be safely used again and which was practically inaccessible to Aboriginal people in any case. The continuation of an Aboriginal tradition was now far more problematic. Thonemann's 1949 book merges the authorial and editorial voices, but the commentary provided in the voice of Buludja is succinct:

you took our country from us and now you stop our keeping water where we want it, so that we can get plenty of food easily. We try to make the best use of our water and our country, but you keep stopping us, saying: 'White man's laws will not allow it.' We think it is time you changed your laws when they interfere with our freedom to live our own way.
(Thonemann 1949:153)

The judge's interpretation of the weirs had a considerable effect, preventing further construction in that location thereafter. However Red Lily was merely the largest and highest profile weir site, not the only one. Local resistance to the decision ensured that Wells' interpretation of 'unlawful at common law' was influential, but did not end weir-building on the upper Roper, nor the (collaborative) intercultural creation of new purposes and interpretations for weir technology.

'A flood irrigation system': weirs as pastoral fodder strategy

My aunty said there was also a dam at Gundungala. That's Moroak.

MR

Although not considered in detail in the court case itself, archival material from 1937-1946 refers to weirs being constructed in locations downstream from Red Lily Lagoon. Soon after the case, a section of Elsey Station was excised and renamed Moroak Station, and from 1951, Aboriginal people from Elsey worked with the new owners of Moroak, the MacFarlane family. In interviews conducted as part of this study, Hamish MacFarlane, son of the original lessee, recalled his father following the advice of Aboriginal stockmen who recommended building weirs at key places on Moroak. However, rather than a means to directly water cattle, MacFarlane described the purpose of the weirs as being 'to push the water out to the outside channels, to dissipate water as far as you could to give more abundance for wildlife [and] plant growth'. Older Aboriginal cattlemen confirmed this, describing them as 'making the grass grow', both for the cattle and for other wildlife. The flooded area was substantial, approximately 10 sq km in MacFarlane's estimation, but in contrast to Elsey (and perhaps partly in response to the problems Elsey's activity had created) he recalled how the Moroak weirs were removed once the soil had been fully saturated:

It was a flood irrigation system. It wasn't designed to be permanent. It's there to promote plant growth. It stopped flowing nearly immediately, within a day [after barrier removal].

Water then would hold right through until rain season, in the low points.

Hamish MacFarlane

Both MacFarlane and the Aboriginal workers recalled that senior Aboriginal cattlemen had a significant influence on pastoral management on Moroak, and although people were aware of the court decision, from MacFarlane's perspective, the Moroak weirs emerged from a sense of responsibility towards the land 'and sometimes if you have to do the wrong thing to maintain your principles and your responsibilities, then that's what you do.' In the 1970s the Aboriginal labour force declined and the MacFarlanes left the property in the 1980s, but the Moroak weirs were nevertheless collaboratively constructed for pastoral (and indirect subsistence) purposes for at least 25 years after Wells formally prohibited weir building. They simultaneously represent a continuation of the Aboriginal tradition, an additional purpose -

flood irrigation – and a demonstration of local intercultural collaboration and resistance to external legal and administrative control over natural resource management in the area.

'It's running too fast': weirs as erosion and flood control

Since passing back into Aboriginal hands in the 1990s, Elsey Station has primarily operated as a pastoral property, but the recent establishment of an Aboriginal natural resource management group, the Mangarrayi Aboriginal Rangers, has increased the level of conservation and natural resource management activity on the property. Unprecedented changes in the direction of river flows at a key Elsey location, Janggan, were observed in 2010 by a senior Mangarrayi Ranger on patrol. Previously, the water flowed through a range of smaller channels towards wetlands adjacent to and on Moroak Station, sustaining fish and other wildlife and directing water to the stations along the northern side of the river floodplain. In 2010, new channels opened up leading in the opposite direction, back towards what is known as Pocket Creek (Wurluguguwan) and the larger main channel of the Roper. Further inspections by senior Mangarrayi led to serious concerns about the water 'running too fast' and causing erosion, about the diverted flow stranding fish, and about inadequate water supplies to downstream pastoralists. Aboriginal elders and managers wanted to take action and, despite concerns about legality, the newly formed channel leading back to Pocket was blocked with paperbark and bush timber. Initially it was highly successful in redirecting water towards wetlands and downstream stations such as Moroak and Flying Fox, as a local elder recalls:

We let that water go out there. They [the weir builders] was going there to open him up, to let that water go right up to Moroak. All over that big river country and the Flying Fox...we just let the water go because they got horse and cattle and everything.

Sheila Conway

Conway had rejected the depiction of the 2010 weir as an obstruction (partly based on knowledge of the past), instead saying it was to 'open him up' and 'let that water go' on its appropriate path. Others involved did describe the new weir as a blockage, but noted its limited effect once the wet season arrived – it was effective as a low-flow diversion for wetland augmentation, not a flood control device. Figure 7 shows the landscape after the heavy 2010-2011 wet season which destroyed the weir and during which most of the erosion occurred.

Although unsuccessful at halting major erosion, the 2010 weir represents a revival and re-purposing of the practice, this time in the context of conservation and natural resource management rather than subsistence or pastoralism. The construction was supported by the use of resources from the local Aboriginal ranger program, the Mangarrayi Rangers, and attended by a non-Aboriginal ranger coordinator, but the coordinator took no part in construction, largely because the formal legality of the weirs was unclear at the time. The 2010 instance also pre-dated the active phase of the research on which this paper is based. From this perspective, it represents a third documented case (following the 'pestering' of Giles and the advice provided to the MacFarlanes on Moroak) of autonomous Aboriginal initiative in (re)instituting weir construction after initial colonisation. This recent instance was both enabled by resources from an overtly intercultural organisation (the Mangarrayi Rangers) and simultaneously represented an overt reassertion of Aboriginal autonomy and natural resource ownership in relation to the wider state.⁸

Discussion

The act of placing paperbark and bush timber into braided channels in the upper Roper has had multiple purposes - Aboriginal subsistence, watering cattle, flood irrigation, wetland management, erosion control, and directing water to downstream users. Once constructed, the weirs also accumulated additional meanings, novel justifications, and ancillary purposes. From the analysis presented here, they additionally emerge variously as: a signpost to future

water development; 'a domestic matter' between pastoral stations; a basis for recognising ancient Aboriginal water rights; and a violation of riparian law. Other interpretations, notably with respect to the relationship between memory and history, will be explored further in subsequent publications. The multi-valency of the weirs – their diverse purposes and meanings - are perhaps the most striking feature of this complex and multifaceted case, and the majority are generated by and through interaction – interaction between Aboriginal people themselves, but more often between Aboriginal people and non-Aboriginal Australians. It is in analysing such interactions that the intercultural seems both identifiable as a manifestation and useful as a concept. In the Roper case, the apparent extent of Aboriginal collaboration in generating such meanings also negates the criticism that the 'intercultural' is too often a zone of and for domination by powerful (in this case colonial) interests - to depict the Aboriginal protagonists in the weir story as powerless and manipulated is to misread or ignore significant evidence to the contrary.

Yet the existence of 'sufficient' collective Aboriginal agency to constitute a legitimate manifestation of the intercultural immediately invites reflection upon the question of autonomy and its extent. The intercultural multi-valencies apparent in the weir story rely upon the continued exercise of an Aboriginal tradition to generate the structures themselves, and in this sense the intercultural has its foundations in autonomous, culturally distinctive actions. Although colonial pastoralism appears central to the story, the weirs were and are part of a suite of techniques to aid Aboriginal people in meeting their obligations to relate to and 'look after' their country and the ancestors associated with it , and from this perspective, the motivations for weir construction can be characterised as primarily intra-cultural. Preventing cattle from bogging and fouling waterways was not just an act focused on pastoral efficiency; it was another means of looking after the landscape and the animals living upon it. This aspect of the weirs is most explicit in their most recent manifestation, when flow alteration was overtly about environmental rehabilitation and protection. The multiple intercultural interpretations emphasised here rely on the fundamental continuity and autonomous

assertion of an Aboriginal tradition and the ethic of responsibility which underpins that tradition.

However, the ways in which that tradition was made manifest over time also highlights the constraints on autonomy, the degree to which it is relative to its context. Even when colonial conditions were at their most favourable from an Aboriginal perspective, the arrival of the pastoral industry necessitated substantial changes in Aboriginal residential and working lives (Curthoys 1987; Rose 1991; Stevens 1974; Strang 1997). As Thonemann made clear, the Aboriginal weir constructors on Eley Station prior to 1945 had to await pastoralist permission before acting, and from 1938 were subject to both government permit processes and to police interventions. Eley Dick was clearly the most vocal and important Aboriginal spokesperson for the practice, yet was omitted from the most significant colonial forum in which it was debated and then subsequently outlawed. The continuation of weir building relied on it being both geographically relocated to Moroak, where a cooperative pastoralist was resident, and undertaken quietly out of sight of the relevant authorities. After activity on Moroak ceased, a substantial thirty year hiatus occurred before the practice was reinstated on Eley, a gap that reflected a lower level of physical engagement with the surrounding landscape by local Aboriginal people during that period due to a combination of factors – reduced pastoral employment, reduced land access, reduced reliance on subsistence as government income support increased, and changing social and demographic conditions. The most recent instance of the weirs relied upon the removal of some of the existing constraints, notably the return of ownership of the current Eley area to Aboriginal hands and the formal resourcing of Aboriginal land management. If the continuation of weir construction reflects the durability of autonomous Aboriginal practice, the various manifestations of that practice shows the relativity of that autonomy – the degree to which it was and is shaped, constrained and enabled by ongoing historical circumstances.

Based on the core word from which the intercultural originates, it seems safe to assume that it emphasises the analytical importance of interaction at the level of cultural collectivities, in

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this case between the cultural categories of colonist and indigene. Merlan's 2005 exploration focused on observations of an individual, Julie, and her 2013 emphasis on relationality and mutual awareness seems to carry the implication of individual cognitive and psychological processes. However as she makes explicit, it is relationality in terms of the categories indigenous - non-indigenous that remain the core emphasis. In countering Merlan's formulation and providing their own, Morphy and Morphy (2013:178) take an overtly systemic focus, emphasising two levels (the relationships between different domains within a regional sociocultural system, and the interaction of differing sociocultural systems). Although complemented by ethnographic examples and by references to both the socialisation of individuals into systems and to the potential capacity of individuals to move between systems, their focus remains at that level of sociocultural system. Given this, and the wider political and policy context within which the debate emerged, it is not surprising that it has prioritised social description and questions of autonomy and intercultural relationality at the level of systems and categories, rather than individuals.

From this perspective, what the historical circumstances and the level of detail about the Roper weirs also suggest is an additional level of analysis, namely of the importance of individual agency and personal autonomy. Such agency seems to have both supported the continuity of an autonomous Aboriginal tradition and/or been integral in developing and maintaining intercultural interactions surrounding it. Elsey Dick was the Aboriginal owner and 'big boy' organising construction of the weirs, but also the most active Aboriginal participant in intercultural collaborations with pastoralists to assert the pre-colonial ancestry and ongoing legitimacy of the practice. Thonemann, for his part, was a colonial pastoralist who chose to explicitly advocate for Aboriginal water rights, and while the pastoral utility rather than the cultural authenticity of the weirs would seem the most plausible primary driver of Thonemann's defence of the practice, his argument for 'ancient rights' emerged early in the dispute and in a strong (possibly historically unprecedented) form. Holt's individual decision to legally challenge Elsey's weirs, and Elsey's collective decision to respond to that

challenge, substantially extended not just the diverse rationales for the structures, but the degree to which they became visible to those beyond Elsey in general, and to the apparatus of the state in particular. The willingness of the MacFarlanes to follow the guidance of their Aboriginal stockworkers despite the court ban was crucial in extending the tradition so that it remains part of the direct experience of living people. Individual decisions and actions had the effect of enabling and justifying Aboriginal weir construction, of subsequently amplifying the profile of the weirs within the wider context, and of ensuring the continuation of the tradition over more than a century.

What this shows is that the intercultural field in which the significance of the structures was posited and debated relied not just on the existence of a generalised Aboriginal autonomy from which the weirs were generated, but on the specific actions and (at times unexpected) choices by particular people – on a level of individual autonomy. To emphasise individual actions in this way is not to deny the existence of the constraints on those actions, or indeed to deny the existence and substantial influence of sociocultural categories and systems more generally. Rather it enables a more nuanced account of how intercultural relationality can be constituted and reconstituted over time, and how diverse forms of individual and collective agency are implicated in that process. In some respects, the weirs are an unusual example particularly suited to this task – the circumstances in which a colonial pastoralist might choose to advocate for Aboriginal resource rights, and in which that advocacy would be carefully documented, would seem relatively uncommon. Yet the underlying colonial and historical processes underway in the upper Roper were and are consistent with those occurring elsewhere, and the corresponding theoretical implications for questions of autonomy and constraint, intercultural relationality and indigeneity, and sociocultural description are broader still.

The weirs on the Roper River are multipurpose and multivalent objects, supporting many interpretations, including the current one. Empirically, they now represent the best

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historically, legally and ethnographically documented instance of Aboriginal water diversion yet found. The story of their construction is a multifaceted one involving Aboriginal autonomy and tradition, colonial dispossession and resistance, and (perhaps most unusually) intercultural collaboration, and they emerge as physically simple but socio-historically complex constructions, at times asserted as ancient and 'immemorial' tradition, at times represented as encapsulated and exhausted by a combination of pastoral utility and recent memory. Our analysis uses this powerful empirical example to interrogate two different concepts in current theoretical debates - the intercultural and relative autonomy – and in doing so, extends thinking about the relationships and dependencies that characterise them. The Roper weirs sustain all of these readings and more - the paperbark and trunks in the river provided fertile terrain for the people, animals and plants of the upper Roper, but they also provide fertile terrain for interrogating theorisations of colonisation and its resistances throughout the twentieth century and beyond.

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³ The obstructions are usually described as 'dams' in the historical material but 'weir' (the term adopted here) is probably more accurate, as their construction allowed some water to flow through, over and around them.

⁴ The unnamed interviewer was probably Thonemann or Elsey Station's legal counsel, Lyons.

⁵ Giles' assent clearly was not assured and in the circumstances of colonial pastoralism, it would have extremely difficult to proceed with weir construction without it.

⁶ In the story, Elsey Dick was sitting with another man and this is presumably a reference to the listener (Merlan's) status as a classificatory granddaughter to the two men.

⁷ A natural barrage that marks the tidal extent of the Roper River.

⁸ Space constraints prevent the issue being examined in more detail here, but the 2010 instance also raises questions about how such activity might be categorised within contemporary water law and policy.