This paper examines the relationship between land, heritage and identity by drawing on extracts of the evidence that was presented in the Yorta Yorta Native Title Claim, 1996-1998. It argues that the categorisation of land and heritage into separate entities is an alien construct, that has the effect of dismembering the holistic notion of Indigenous property rights. I acknowledge the Yorta Yorta witnesses cited for the use of their evidence in this paper for educational purposes.


Non-Indigenous writers acknowledge the 'holistic' approach (Bird, 1993:106). The following observation by Frans Hoogland, a European man who spent considerable time with Paddy Roe, an Aboriginal leader, helps to illustrate this point:

We [white people] don’t see the connectedness of all things. We put all the birds into a box – they are birds. We put all the rocks in a box – they are rocks. But they are one and we are a part of it. We all make up the living country’ (Hoogland, 1999:21).

For Hoogland, Aboriginal perceptions of land defy categorisation, objectification and other hallmarks of European achievement. It is best not to impose 'Western categories of understanding', Professor Stanner believes, but to try to conceive of things as the

The relationship between Indigenous identity and land to which Aboriginal title attaches is an inseparable one. The loss or impairment of that title in Pearson's words is 'not simply a loss of real estate, it is a loss of culture' (Pearson, 1996:219). The desire of Yorta Yorta people to be buried in their ancestral lands is a good example. To be buried in your own land in Yorta Yorta belief is to be at home, so that your eternal spirit is free to reunite with your people. To be denied this right is to be cut off from your culture, and community, not just from your land. The right to maintain spiritual interests, to be buried in your land and to protect your heritage, are some of the Native Title rights that will be examined (see Yorta Yorta Native Title Evidence in Chapters 2 & 7–9 for explanation of burial rights under Native Title).

The holistic nature of Indigenous perceptions of the land and its features was examined in the Yorta Yorta Native Title Claim. Many witnesses expressed the view of being one with the land, and of owning it and being owned by it. Obligations to look after country in this sense is exemplified by Ken Briggs and Neville Atkinson who speak of their responsibilities in the following way:

Neville speaks of it being 'our water' and the 'obligations to look after it' include:

…making sure that it is used in a manner – not being used and abused. That we got a say over the waters and like we should do for all our area. That's our water, that's our land. We should have a say of it. (Transcript 1077).

Ken Briggs said:

We'd like to have a say in water. Our water was free. It's not today. It's being sold out and sold on us (330).

Mr Howie:

Do you consider that you have – that you're entitled to have a say, the Yorta Yorta people, in respect of water?

Kenneth Briggs:

Yes. In our area and through here

– indicating the waterways of the Goulburn and Murray Rivers within the claim area.

Mr Howie:

Why do you have that right?
Kenneth Briggs:  
It's a god given right, isn't it.

Mr Howie:  
Why do you have that right here, on the Goulburn and the Murray?

Kenneth Briggs:  
It's Yorta Yorta area and Yorta Yorta people.

Colin Walker:  
I think the forest is like a human body. The Murray River is the spine, and the Barmah and Moira Lakes are the kidneys on both sides. That is how the old people used to look at it. They would say – 'this is our life'. It is a living thing. We are the land, and we are mother earth. We fit in like that. It is important that I teach the young children the respect for the forest, the trees, the water, the streams, the lagoons, the water ways, as it is a part of us, and we are a part of them (Exhibit A8 pp. 10-12).

Like many other witnesses, Shane Walker explained the [inseparable] nature of the land and its connection with places and other aspects.

Shane Walker:  
For me it is a sign of respect to my ancestors and to the bush to look after it and maintain it. I feel that my generation of Yorta Yorta people are the guardians of the forest. We have to care for and respect the important places. We know this is our land. We own the forest and the forest owns us. It makes me sad to see all the cattle going through the forest. They do not belong here. They push the native animals back into the farmlands. We are forced to fence our sacred sites to protect them. Shell middens on Moira Lakes and Barmah Lakes have had to be fenced. Burial grounds and mounds, and the bush hearths and ovens have had to be fenced. The scarred trees that had been used for canoes, and shields and coolamons have to be protected (Exhibit A8, pp. 31-32).

Wayne Atkinson further explains the holistic nature of Yorta Yorta land relations and the artificial perception that is often created of sites, through the forms of heritage protection provided.

that's a question that, comes up all the time when you're trying to describe a site, and its relationship to the broader area. I believe that's a dilemma that, this fencing program puts us in when we're trying to define sites and the full context of a site. If the fence wasn't there this whole area is to me a site (Transcript, 3303).

We can see from this evidence that there is an underlying philosophy of knowledge which is driven by traditional based laws and customs. Yorta Yorta witnesses are reaching back and re-emphasising many of the values practiced by their ancestors. They are using this knowledge as a means of reasserting what they see as their traditional rights.
There are many other aspects of Yorta Yorta connections that are expressed through what we now regard as cultural heritage aspects. These are the living manifestations of culture that continue through knowledge of medicinal plants and through the use of natural resources. Many Yorta Yorta witnesses spoke of continuing to utilise the natural resources as inherent rights.

**Oral Evidence**

Bottles of an effusion of 'old man weed', collected from the original lands, take a prominent place in the medicine cabinets of Yorta Yorta people (Transcript 2049, 3124). Emu fat is also used for medication (Transcript 1762). During their lives, Yorta Yorta people have been dependent for survival upon the results of their hunting and fishing. As Kevin Atkinson states:

> That was very much part of our way life, I guess, because we depended a lot on the fish that we caught to survive and rabbits and other game that was around, ducks, kangaroos.

Possums, and other fauna were a significant source of protein for some Yorta Yorta people born in the 1940s and 50s (Transcript 1721).

Ella Anselmi remembers her childhood growing up on the riverbank:

> And we were so hungry we couldn't sleep. So we put some flour up the tree, well actually, I did it, because my grandfather taught me how to do that. And put a trap down the bottom of the tree and I would get out of bed, put a bag over the possum's head, and kill it myself. And we soaked that possum overnight and then we ate it the next morning and for dinner and for tea. And that's what I remember about the flats here.

Speaking of life on the Mooroopna flats, Ella remarks:

> Plenty of possums, I mean we were eating possum till it was nearly coming out my ears (Transcript pp. 688–99, 744).

Roderick Briggs on stating his Yorta Yorta identity is asked by Mr Howie what that entitles him to do (Transcript pp. 889–90).

Roderick Briggs replies:

> Fish, hunt, use the waters, land.

Mr Howie:

> And where do those rights come from?

Roderick Briggs:

> Passed down from my ancestors, the traditional owners of the land.

Henry Atkinson expresses similar views by saying:

> If the land is my land, well, I have every right to fish and hunt whatever I like.
Mr Howie:
   Have you always regarded yourself as having that right?

Henry Atkinson:
   I always regarded myself as having that right. Tell you the truth, I've never,
ever held a fishing license and I don't intend holding a fishing license to fish or hunt in my own country. I understand the rules and firearms, which I don't believe in anyway. But as far as fishing rights go, I'll fish whenever I like (Transcript 2212).

Des Morgan is asked by Mr Keon-Cohen where the rights to hunt and fish came from:
   Did your father say anything about that country or the hunting and the fishing?

Desmond Morgan:
   Well, I guess they were handed down from generation to generation and that's the way it was. They come from my father.

Mr Keon-Cohen:
   And do you have any understanding of where he got them?

Desmond Morgan:
   I believe they were handed to him from his father, and, my mother's people were known as fishermen and I believe that, we're Yorta Yorta people and mainly people of the river and we traditionally use the resources of the river as a right.

Des Morgan elaborates on the importance of these rights to him by saying:
   Well, I believe that it's important to eat the food. I hunt; I do it to feed my family. I also do it because I enjoy the foods, and you can't buy them in shops without paying excess money for it. And I believe it's my right to go out and collect the fruits of the land that is my ancestors' land.

Mr Keon-Cohen:
   And are you talking of the rights you mentioned before when you say It's my right?

Desmond Morgan:
   It is my right.

Mr Keon-Cohen:
   Now, do you pass on this knowledge, these rights?

Desmond Morgan:
   Yes, I tell my children that it's their right; this is their land; they have the right to use the fruits of it, produce from it and, I take them with me when I exercise these rights. I teach them what I've been taught (Transcript 1187–9).
This evidence supports the view that Yorta Yorta survival depended very much on utilising traditional knowledge of natural resources and that this has continued. In many cases, it has continued and often co-existed with white settlement (see Chapter 3).

**Protection of Places as Matters of Traditional Law**

The Yorta Yorta people acknowledge as matters of traditional law an obligation to protect the places on their land, which manifest the activities of their ancestors. The sites are the tangible physical and cultural record of Yorta Yorta occupation long before the arrival of Europeans (Chapter 2).

The Yorta Yorta has been told of the significance and location of many places by their parents and grandparents. The traditional knowledge passed on to them is that these places are evidence of the presence and activities of their ancestors. As such, they are places of traditional significance, marking as they do the lives of earlier generations of Yorta Yorta people. The fact that the people who cut the trees or discarded the shells may not have regarded where they did so as being of any greater significance than any other part of their county in no way diminishes the significance attached to such places by contemporary people. They regard themselves as being under an obligation to protect them. It is a traditionally based obligation that is rightly understood as being a matter of traditionally based law currently acknowledged and observed.

Des Morgan explained how the significance of places, and the obligation to look after them, was inculcated into him by his father:

> My dad used to show me burial sites and point out scarred trees, what they were used for, how they were made, things like that...He just told me that they were burial sites and that they should be looked after and protected, and he always used to tell me, be careful who you told about them in case someone should take it into their head to destroy them.

Mr Keon-Cohen:
> And did he indicate why they were of such importance, to be protected?

Des Morgan:
> Well, I think it was because...they're our ancestors, and you've got to have respect for the dead... for your ancestors there. I mean they give you life and they give you your values and your rights and your traditions (Transcript pp. 1191-1192).

Having explained how his father had shown him 'different sites, burial places, scarred trees, hunting places', Des Morgan expanded on the significance of those places to him (Transcript pp. 1195–7).

Desmond Morgan:
> Yes, I see a lot of things when I look at a midden. I see, a piece of my people's history that tells me where they camped; also I look at the
environment around it which tells me why they camped there – the billabongs, the food sources around those billabongs, the club rush, the kabungis. You see scars on the trees next to them. Sometimes there's scars there that tell you that there's a burial within the midden...it's important to me because that's where my people camped; that's a reminder to everyone that this is our country; that our people made use of this country and that wasn't a deserted land. They may not have constructed 40-storey buildings; they may not have ripped out every tree in the place to make room for themselves, but they did make use of it and they were here.

He went on to speak of the obligation that he was under to protect such places: 'I feel a very strong obligation, otherwise I wouldn't be doing this job'. Des Morgan is speaking of his work as a cultural officer employed by the Njernda Centre in Echuca (Transcript 1197).

**Traditional Places**

Two witnesses, Ken Briggs and Neville Atkinson, spoke of a ceremonial place. Neville Atkinson had been told of the place by Uncle Ken Briggs. Ken Briggs was shown the place and told of it by older men. He was told that it was a secret place, and that he should not speak to others about what he was shown. Although traditional ceremonies are no longer performed, Ken Briggs clearly regards himself as bound by the prohibition on disclosure imposed upon him by the elders. This prohibition has the strength of law. Such was the strength of it, neither the probing of counsel, nor the advice of the Court as to what may assist the applicants' case, could overcome the unwillingness of Ken Briggs to breach the prohibition imposed. He perceived that to do so would risk grave harm of a non-natural kind not so much to himself, but to members of his family (Transcript pp. 4979–82).

The prohibition, and the perceived consequences of its breach, is rightly understood as being matters of traditionally based laws currently acknowledged and observed. Other witnesses were reluctant to disclose information of important places that were told to them in fear of breaching the sacred trust under which the knowledge was given. Wayne Atkinson refused to reveal knowledge of sites passed on to him by elders in respect of breaching the confidentiality entrusted in him as a Yorta Yorta man (Transcript 5444). His right to withhold information of this nature was regarded by the trial Judge as a lack of 'trust' in his adjudication of the case (Transcript 5444). The manner in which matters of confidentiality, respect for culturally sensitive knowledge, and Yorta Yorta oral knowledge was treated at trial, will be analysed in the final chapter.

Monica Morgan detailed the relationship between rights; obligations to protect places and country in general; learning those obligations from older generations; passing those
obligations on to the next generation; how that happens; and the effect of declining health of Yorta Yorta country on Yorta Yorta people:

Mr Keon-Cohen:
When you think of Yorta Yorta country, do you enjoy any rights in that country?

Monica Morgan:
Yes, I enjoy all the rights of my ancestors.

Mr Keon-Cohen:
What rights are they?

Monica Morgan:
I think those obligations are part of traditional laws, customary laws that we have in regards to using the country for survival. We have a responsibility to care for those places of our ancestors, our creation. I think we have a right to be able to have economic gain from our country and economics is not in terms of money but it's in terms of to able to fish and gather our plant foods, to be able to go into areas and to feel safe and secure in knowledge that where we go is our country.

Mr Keon-Cohen:
Do you have a right to live there?

Monica Morgan:
Yes, we have a right to live there, if we choose.

Mr Keon-Cohen:
Where do these rights come from?

Monica Morgan:
They're inherent in me from my ancestors.

Mr Keon-Cohen:
And when you pass away, where will they go?

Monica Morgan:
They will go to my children.

Mr Keon-Cohen:
How does that happen? How do they receive it? Under the Mabo requirements?

Monica Morgan:
They receive it because they have my blood.

Mr Keon-Cohen:
All right. You spoke of respect and obligations. How do these obligations manifest themselves today in the Yorta Yorta community?

Monica Morgan:
To protect burial sites because they are our direct link to our ancestors...to ensure, I think, that the land is looked after...to pass down to our children customs and traditions of our people.

Mr Keon-Cohen:
Do you observe the forest today? Do you have any comment on its health or otherwise?

Monica Morgan:
The ability may have become easier for us to protect sites because there has been various legislation that had not been there previously. But, we were given the ability to be able to protect the site itself, but not the environment around the site. We've got instances where the creeks or billabongs in which midden sites or burial sites may be, but you look at the environment around, and it makes us very sad that the environment around doesn't reflect the history of why that midden was there. Why our people lived there and what was available in regards to plant foods, or bird life, or animals. We also reflect on the condition of the river. We believe the river has declined in its condition a lot. That's of concern to us (Transcript pp. 1277–8).

The obligations of caring for country and the protection of sites indicate practices that are driven by concerns for country and the need to utilise introduced laws and legislation to assist in protecting Yorta Yorta heritage. This demonstrates an intelligent adaption by combining old and new methods of land management. It also demonstrates that the Yorta seek and often assert their rights to be actively involved in land and water management. They continue to assert their authority as the traditional owners of the claimed land and waters within contemporary mainstream society.

**Relationship between Country and Survival**

The evidence on land, water and heritage matters affirms the notion of continued connections and rights to ownership and control of land and resources. Many witnesses express concerns for land and the continuity of traditional practices. Some speak of the declining nature of country, and survival, and the importance of traditional based practices and beliefs in current land management practices. Monica Morgan expresses her views on the declining nature of traditional Yorta Yorta land and water.

Monica Morgan:
I believe we are part of the country and I remember hearing that people are talking about how all things interrelate. Since creation, those animals, those birds, all those creatures that have been put on this country, are of an equal importance to us and with their decline, I believe that it can equate to decline of our own people and it becomes a sickness.

Mr Keon-Cohen:
A sickness in your people or a sickness in individuals?

Monica Morgan:
Well, if your land is deteriorating and you're unable to get those things that relate yourself to your land and be able to do those things, over the time it can only lead to us not having the strength and we're saying that if we are to survive as a people and if our country is to survive, then the two of them have to go together and look after the place (Transcript pp. 1277–8).

Transmission of Laws and Knowledge

Educating the young about cultural matters was seen as an important part of the responsibility of elders and the passing on of the surviving traditional laws and customs. Richard ('Dicky Lee') Atkinson (since deceased) sees educating the young about caring for Yorta Yorta country as critical:

Well, we try and do that, every chance we get. If we're working around with young people and they look like they destroyed something that we don't want destroyed or we'd like to be kept looked after, we would tell them about it, and tell them the reason why.' (Transcript 1798).

Today, Colin Walker brings young Yorta Yorta people to camp in the same area.

Mr Howie:
Do the young people and the children living at Cummeragunja and at Shepparton and Echuca and those places know about this area?

Colin Walker:
Yes, all the little ones. We've had schools and we've brought them up and camped down on the river, cultural camps, and we have brought them up and showed them around and told them stories about this and the ochre mine and all that (Transcript 2317).

Neville Atkinson emphasised the importance of the transmission of laws and knowledge about such matters to their children as being of fundamental importance while discussing traditional Yorta Yorta law.

Mr Howie:
Do you tell them about rules or practices with regard to the land?

Neville Atkinson:
Well, I pass on that attitude. Like I said, that's our laws. You got no choice in the matter. They have to respect the land. They have to look after the animals. Our role is to care for and look after our lands and our animals. So that's the law, our law (Transcript 740).

The sense of obligation that Yorta Yorta people have to be involved in the decision-making that affects their country, and their sense of the right to do so, are inseparable. Both the obligation and the right are expressions of the same law. Founded as it is on the proposition that such decisions relate to the traditional land and waters of the Yorta Yorta, it is a traditionally based law. Neville Atkinson spoke of how the responsibilities
and rights in respect of the land and waters of the Yorta Yorta have passed to the contemporary generation from their ancestors, and cannot be ignored.

Mr Howie:
This connection that you have with this land, does it give you rights in the land, or interests?

Neville Atkinson:
All that. That is why I've got the rights to the land. All those things. The holistic thing of being Yorta Yorta. That's what gives me the right, being born who I am. It's birthright. It's part of my responsibility and that's why my interests are in the land because of all those things.

Mr Howie:
What sort of rights do you say you have in the land?

Neville Atkinson:
Rights to protect, rights to say what happens to everything in it. Rights to be a part of decision-making processes and to have that power of final say. Nothing happens without the Yorta Yorta knowing about it. Those sort of things. If we're recognised under you fellow's laws to be given that power of protection then the wider community would be much better off. We wouldn't see things used and abused for personal gain like the forest and the waters, animals and everything is.

Mr Howie:
You say that's a responsibility you have. Why is that your responsibility?

Neville Atkinson:
Because that is what my ancestors' responsibility was. I've got to continue that responsibility on. They gave me that responsibility, they passed it onto me so I got to do the same too.

Mr Howie:
Can you just set that responsibility to one side and ignore it?

Neville Atkinson:
No. Otherwise I'd be a joke (Transcript 730).

The assertion of Yorta Yorta rights to land, and the need to be part of the process including the right to be consulted as the traditional owners and custodians are seen as inherent rights. They are rights that Yorta Yorta people, and particularly those working in land and heritage protection, see as obligations decreed in them by their ancestors.

**Protection of Heritage**

The obligations bestowed on the Yorta Yorta to look after country to protect their heritage and to continue the traditions of their ancestors is consistent with the theme of adaption and continuity. The Yorta Yorta regard the protection of places as extremely
important. They pursue protection in a formal and organised manner through their own organisations. Yorta Yorta organisations have played a significant role in the protection of sites from Kow Swamp in the west, to Mount Pilot in the east, to Whroo and the Garden Range in the south, and to Deniliquin in the north. These same organisations also participate in the general decisions regarding management of country.

Funding through various grant processes is actively sought for the protection of sites and burial grounds including fencing projects. Yorta Yorta people also demand involvement in site clearance projects undertaken by archaeologists in association with infrastructure development projects. The Yorta Yorta directly lobby government and use other legal and political means when the normal protective processes prove insufficient.

**Decisions on Land and Resources as Matters of Traditional Law**

Other Indigenous groups acknowledge the Yorta Yorta fiduciary relationship to the land and waters. The observation of appropriate protocols on land, heritage and water matters was discussed in the previous chapter. The Yorta Yorta believe that they have not only an obligation to care for their country but also a right to play a substantial role in decision-making processes relating to the protection of the environment, wildlife species and the preservation of the land and waters.

Gary Nelson states:

> Almost from birth Yorta Yorta people are taught to be concerned about their land. It is more like the motherland owned us than us owning the land. He speaks of going to significant places in the forest to protect them as an obligation of traditional law and custom (Exhibit A8 pp. 240–1, 242–3).

Geraldine Briggs states:

> We have a special feeling for the earth. It is something that belongs to us. You must not destroy it. We see a lot of trees being destroyed, and that really upsets me (Exhibit A8 pp. 260–1).

Colin Walker, states that 'the main responsibility as an elder is the protection of the forest, and the burial sites'. He recalls, in relation to sites recorded at Algabonyah plain, how his grandfather taught him

> not to camp in this area...not destroy it, or dig it up, that if I did I would get sick; that it would be disturbing the spirits of the old people'...I follow that tradition. Yorta Yorta people have the responsibility to make sure that our land is protected. I have spent much of my life fighting to protect these places'.

He continues:

> It is also our responsibility to care for the land. A lot of damage has been done to our land...the Forest must be respected. You should not camp and
leave a mess...We are all supposed to be responsible people for mother earth 
(Exhibit A8 pp. 4–5, 8–9, 18–19).

The Yorta Yorta concern for the preservation of their traditional land and resources is something learned from a very young age. It is internalised as a forceful belief and is fundamental to the Yorta Yorta view of existence. These general practices have been consistently maintained in the face of the disruptions that have taken place.

**Joint Management with Land Authorities**

Yorta Yorta people have a sophisticated understanding of land and water management issues, and have attempted to develop a partnership with government agencies. A draft policy document on future joint management was presented to the Court (see Chapter 6 on Mediation and Appendix. 2). Paul Briggs discusses some of the appropriate structural arrangements that are required in the region:

**Paul Briggs:**

I would hope to see that there is a combination of the cultural values of the Yorta Yorta intertwined with some of the technological experience that non-Aboriginal people have developed, but that the economic pursuits and the technological pursuits don't over-ride the cultural values of the land (Transcript 909).

Asked about the role of the Yorta Yorta in future management strategies, he said:

I would like to see that mainstream management structures showed the respect that enabled this land to be managed effectively for the 80,000-odd years of Yorta Yorta people's existence. I would hope to see that the respect of that type of land management, the principles of land management that enable that to happen, were incorporated and led the management of the river systems and of the land use (Transcript 909).

Monica Morgan outlined a coherent picture of the interplay of Yorta Yorta rights and obligations with contemporary management structures and the integrated manner in which the Yorta Yorta view heritage and land management issues (see Transcripts pp. 730–1, 3259–60).

**Mr Howie:**

Do you accept that there's a distinction between matters of cultural heritage their obligations on the one hand and matters of protection of the land and the environment on the other?

**Monica Morgan:**

No, I don't believe there should be a distinction. It's been made – we've had to operate in those areas because the legislation or the structures have been narrowing us into those areas.

**Mr Howie:**

Why do you think there is no distinction?
Monica Morgan:
   The reason for our existence is because of the whole land and cultural
heritage sites are just a physical mark of our existence on the country, but the
land itself sustained us.

Mr Howie:
   And do you regard the Yorta Yorta people as having rights or obligations to
the whole land?

Monica Morgan:
   We have obligations as the people from this country. We believe that we
were placed here, that we come from this country and we have obligations to
look after it.

Monica goes on to say that
   Our people have used whatever methods, whatever legislation have been
available to protect our cultural heritage and environmental heritage. And
since we have come together much stronger under the Native Title, we've
acted as a support for the protection of sites such as Kow Swamp (Transcript
1494–5).

The evidence is consistent with the view that the Yorta Yorta has been more than
willing to adapt to statutory processes concerning land and heritage matters. They have
also asserted their rights as the traditional owners to have control over the processes of
heritage restitution and have taken responsibility for these matters.

Wayne Atkinson
Yorta Yorta
11 January 2001