and never relented in the struggle for their country. In so doing they have preserved for all of us an ancient tradition of wisdom, centred on this land.

The future national park will be truly special, combining a renewal of the natural environment with a restoration of justice, in the continuity of Indigenous culture. It also bears the imprint of two centuries of immigrant history and is a place where all feel at home.

**Barmah-Millewa:

some thoughts for

future directions**

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The following views were penned in response to an invitation from friends and supporters of the Yorta Yorta Struggle for land justice. Given the long and enduring nature of our struggle and the meagre returns that we have gained through legal and political processes, it is a good opportunity to reflect on some of our experiences of the prevailing barriers to land justice in 21st century Australia, and to look at pathways that may offer some direction through what has been a created legal impasse.

The paper is guided by the dismal failure of the land claims process and the need for a renewed strategy. I have been inspired by the collective work of the Yorta Yorta and the Barmah-Millewa campaign. I believe the campaign has the makings of a people's movement and the potential to embrace a cross-range of interests with similar objectives. Indeed it can inspire a holistic approach which recognizes the inherent nature of Indigenous rights and interests, and it can support the desires of many Australians to hold on to those natural and cultural values that we treasure for the benefit of future generations. As a reality check, however, it must also be said that it is not a cure-all remedy for the future, but an attempt to initiate discussion and thought on issues of common interest. It is an opportunity for those who may feel disempowered or marginalised through existing political-legal processes to at least become engaged. In this context it may well be considered as a means of people empowerment, long overdue.

Let me emphasise that the paper is not about exploiting the opposing forces that seem to dominate western communication dynamics, but it seeks to offer a pathway of ideas and objectives which offer some guidance and which can be used as a basis for a people’s movement. A people’s movement in this context is one that is owned, controlled and driven by people rather than being attached to or dependent on the whims of government. My experience of past approaches has taught me that such a movement also needs to be driven by a broader worldview or lateral vision. Too often the one-liners are dropped, sometimes deliberate and often with little substance. They can be used, as we frequently witness, to dominate and often stifle, divide and frustrate debate. Status quo politics is another term used to describe this process. The broader holistic vision offers more. It is one that is required to at least shift the debate out of the quagmire that has been created. That is the general vision of the paper.

Developing a suitable ideology that is both well grounded and capable of driving a people’s campaign into the future is the challenge. It also needs to have similar if not parallel objectives in relation to the objectives of Indigenous land justice and the aims of the Barmah-Millewa campaign. I will now reflect on what I see as the key barriers that denied us justice in the Yorta Yorta Native Title Case (1994-2003), and then present some options as a basis for discussion and for future directions. I will then summarise what I believe is our current position in relation to achieving rights and the perpetuation of natural and cultural values.

**Barriers to achieving land justice in the Yorta Yorta Case**

From my experience as a claimant and as a participant in the Yorta Yorta Case, native title seems to be driven by politics rather than the letter of the law. The appointment of judges in native title cases who have accumulated preconceived notions of Aboriginality, the mindset of opposition towards native title that was whipped up by opponents of native title, and the engagement...
of mercenary-type expertise to try and undermine the credibility of claimants, are all good examples. Others obstacles to reflect on are:

Justice Merkel's standing down from the full bench of the Federal Court on the Yorta Yorta appeal case. The sad irony is that Justice Merkel's enlightened understanding of the first people's history of this country was used by those who suffered from acute knowledge deprivation of the same matters, to undermine his selection to the full bench of the Federal Court. The narrowing of the interpretation of tradition, the Anglo-centric and frozen-in-time test used by Justice Olney in the Yorta Yorta case, created barriers to achieving fair and reasonable justice.

On reflection it must be said that tradition is a dynamic concept. It is an evolving expression of a society and culture. Tradition reflects changes, modifications, alterations and shifts of a society from both internally developed and externally introduced or imposed sources. For example, it would be very difficult to argue that Kurdish, Armenian, Jewish or Gypsy tradition has remained static and unchanged or that their traditions have had strict traditional continuity over time. This is because of the direct racism, persecution and genocide, and the indirect social evolution of tradition, as an orally transmitted history, custom or practice. It is constantly being altered by the circumstances of the various communities. The same can be said for the Yorta Yorta and Aboriginal societies in general.

However, Justice Olney chose to look at Yorta Yorta tradition in a conservative, narrow sense, not allowing for natural evolution or adaptation to new circumstances. He seems to have gone into the proceedings with preconceived notions of what constitutes a 'traditional Aborigine' and drawn conclusions based on the false premise of south-eastern Aborigines not being 'real Aborigines', and therefore not eligible for native title. Indeed the native title process in the Yorta Yorta experience has driven the wedge of racial categorization deep and hard.

From this analysis one can see that with each step along the road to justice the sequential barriers process is perpetuated.

That is, no sooner do you knock one barrier (terra nullius) down than another one is constructed (tide of history). The challenge that confronts a people's movement against this rather daunting reality is: how do we find pathways into the future? Continue down the road of legal deception or chuck your weight behind an alternative strategy? I will wind up by looking at what options are available that can run concurrently with the continuing legal-political struggle.

The way forward

There are some domestic and international avenues that can be engaged to expose the shame of the Australian government's treatment of its first peoples and to achieve some measure of land justice. These are:

1. A negotiated settlement between government and other parties which recognises the Yorta Yorta as the traditional owners.

2. The Barmah-Millewa Campaign for a national park recognizing the Yorta Yorta as the traditional owners under a joint management arrangement. This is a people's movement strategy that requires support from friends, supporters and people interested in preserving the Barmah-Millewa Forests as a national park under a joint management arrangement.

3. Lobby the Bracks Government to introduce land rights legislation and set up a land claims process. With the advantage of having the numbers in both houses, the Bracks Government could introduce land rights legislation like that which was aborted, with expressions of deep regret, by his predecessors John Cain and Joan Kirner in the 1980s. The Victorian government could then return the Barmah Forest to its traditional owners under a joint management arrangement similar to those in other parts of Australia. Likewise the New South Wales Labor government could do the same for the Millewa Forest.

4. Pursue the matter through UN Human Rights mechanisms—HEROC, ICCPR, and WGIP. We could invite another Nation State to take up our case at the ICI. An obstacle to getting a hearing at the International Court of Justice is that only states are able to present cases there, so it would be necessary to find a sympathetic state with resources and commitment that would not be victimized by other nation states, including Australia. The UN is an important mechanism that can be used to keep the issue on the burner. It can be used to expose Australia's treatment of its Indigenous people to other Indigenous peoples and Nation States.

Given the options presented and the overlapping nature of the rights and interests being pursued, they can be tackled concurrently, including the declaration of the Barmah-Millewa Forest as a national park. It is against this background, coupled with the reality of the dismal land justice returns in 21st century Yorta Yorta history, that a people's movement offers a viable alternative to long, protracted and costly legal processes that produce nothing at the end of the day. It is a path that many, including myself, are keen to throw our weight behind. ☀