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THE MADAYIN

Madayin is the name for the complete system of law of **Yolŋu** (Aboriginal people of North-East Arnhem Land). It embodies the rights of the owners of the law or citizens (**rom wataŋu walal**) who have the rights and responsibilities for this embodiment of law. This **Madayin** includes; all the peoples law (**rom**), the instruments and objects that encode and symbolise the law (**Madayin girri**), oral dictates, names and song cycles and the holy, restricted places (**dhuyu nungat wäŋa**) that are used in the maintenance, education and development of law. This law covers the ownership of land and waters, the resources on or within these lands and waters, it regulates and controls; production and trade, the moral, social and religious law including laws for the conservation of, and the farming of, fauna, flora and aquatic life. **Yolŋu** believe that if they live out their life according to the **Madayin** it is a right and civilised way to live. The **Madayin** creates the state of **Mägaya**, which is a state of peace, freedom from hostilities and true justice for all.

Many **Balanda** (non-Aboriginal people) on the other hand see **Yolŋu** law, and Aboriginal law in general to be about themes like; 'the dreaming', 'pay back', all ceremonial, all religious, or a rule of tribal leaders, etc.

If we take just one of these themes and examine it we start to see there is no basis to unfounded beliefs like 'the dreaming', a concept originally coming from Spencer and Gillen¹.

Yolŋu do not see their law as 'the dreaming', and they become highly insulted when this term is translated into their language, saying, "Our **Madayin** is not a dream or the dreaming, our **rom** (law) is real law, from the foundation of time". It's a bit like some outsider to the **Balanda** system of law saying that the system of law comes from a dream just because the hearer doesn't understand what Westminster means. This would be offensive to many **Balanda** because it calls into question the whole of the **Balanda** system of law. The same offence is taken by **Yolŋu** when at law their **Madayin** is seen as something like 'the dreaming'.

¹ *Native Tribes of Central Australia, Spencer B. And Gillen F.J. London 1898.*

That is not to say that some **Yolŋu** will not use the term 'the dreaming' when they are talking to **Balanda**. They will. This is due, we suggest, to the fact that they feel they must use this term so **Balanda** can understand what they are talking about because this is the term that **Balanda** always use when **Balanda** talk to **Yolŋu** about **Yolŋu** law. "Tell us about your law, your dreaming". Many **Yolŋu** believe that they must use the term "dreaming" when talking about law otherwise **Balanda** will not understand what they are saying. Maybe even **Balanda** law is a 'dream', and that's why **Balanda** always use these two words, law and dreaming, together. If the **Yolŋu** traditional terms could be used and understood, then a much clearer and different picture would emerge.

The true term for **Yolŋu** law is **Madayin**, and **Yolŋu** see their **Madayin** existing from the **djalkiri** or the **ŋurrŋitj**.

FROM THE FOUNDATION OF THE EARTH

Djalkiri literally means the foot, footprint or root of a tree, but when it is applied to law or **Madayin** it takes on a more profound meaning. The people talk about their **Madayin** saying, "When I am teaching young people the law from the **djalkiri**, I mean it is not a lie, nor is it something I have made up, because this law has its roots in the foundation, or creation of the world. In other words when the earth came into form and was created by **Wajarr** (the creator spirit), the **Madayin** was there at the same time. The **Madayin** was not brought into existence by humans, it was there in the beginning. When humans first breathed, the **Madayin** was there already. The **Madayin** tells us who we are at law, and who are the **yirralka wataŋu** (owners of a particular estate), who has the right to the resources of these estates, and it tells us our rights and obligations, and the way we should live. This is not something man has made up, it is set down in the **Madayin** from the **djalkiri** (from the foundation of the earth). The **Madayin** creates a state of **mägaya** (peace, tranquillity, no hostilities and true justice for all)". *The law from the foundation of the earth is called the **Madayin**.*

THE CARBON RECORD OF A SYSTEM OF LAW

Nurrngitj or **lirwi** literally means the charcoal or the black ashes left over from a fire. But when the people use this term **nurrngitj** in relation to law it shows us linguistically a more profound meaning than just charcoal or the black ashes left over from a fire. When **Yolŋu** say, "Our **Madayin** or **rom** (law) comes from the **nurrngitj**", it is a profound thing that they are saying. To help the reader understand its meaning we will record a number of ways that the people talk about **nurrngitj**. There are basically three themes that come from the people's words. When asked by the writers to explain what they see in their mind when they use **nurrngitj** in relation to law, the people say:

- Theme 1. **The law comes from the bulawkitj or buwalk-puwalk (ancient, historical practice of the people).** "When I sleep without a blanket under the stars or I use a paper bark blanket its **nurrngitj** (the ancient practice of my people). If I have a number of wives its **nurrngitj**". "When our people moved around their estates they burnt their fire to cook food, to warm them, to keep mosquitoes away, to clean the estates and to make the grass grow for the wallabies and emus to eat. All these things our ancestors did are **nurrngitj**." " When we move around our estates and we see **nurrngitj** in an old campfire we think back to our relatives who sat by this fire. They were here just like we are living off our estates now. It was because my ancestors lived by the **nurrngitj rom** (law) that I am here today, living in the shadow of their existence." "It is **nurrngitj** that makes us what we are." ***Nurrngitj is the ancient practice of the people.***
- Theme 2. **The established rule of law.** "When I was born the **nurrngitj** was there to establish who I am and my position in law." " When we burn the fire wood the thing that is left over when the fire burns down is the **nurrngitj**, and it is the same with law. It's the real law that lasts forever - not people's ideas and thinking." "It does not matter if people break the law or bend the law the **nurrngitj** (the real unbroken, tried and tested, straight law) is still there." "If I live outside the law I will lose respect, the **nurrngitj** will remind me." ***Nurrngitj is the established rule of law.***
- Theme 3. **The care and protection under law, to those who live under the nurrngitj.** "**Nurrngitj** is like the **warraw'** (shade) of the tree that

we are sitting under, it protects us from the burning of the sun." "Its like all the citizens of Australia live under the shade of the Australia Government, under its care and protection." "**Nurrngitj** is like a shade. We can live under its protection and care." "Like when a **Balanda** builds a house and puts up a fence he feels safe inside of that yard because the established law (of the land) protects him and gives him assurance that everyone else will respect his yard (property) because of the **Balanda** law that has been established over many thousands of years. Well this is the **nurrngitj**." *The Nurrngitj is a jurisdiction of law.*

One of the people commented, when we were talking about the **Madayin** existing from the **djalkiri** or the **nurrngitj**, that, "Its like when we think about the Olympic Games. When we see the Olympic symbol we think back to the ancient Greeks. It does not matter if they are not a rich country or not very powerful today, when it comes to the Olympics, Greece was the **djalkiri** (the foundation) and the ancient Greek people were the **nurrngitj** (they established the way the games run by what they did). No one can change that **djalkiri** or that **nurrngitj** for the Olympic Games." He went on to say "And its the same with our law. It does not matter if Balanda do not recognise our law. It is still there from the **djalkiri** and the **nurrngitj**".

A rule of law is necessary for any group of human beings to live together in peace and harmony. **Yolngu** are clearly saying:

1. Their system of law is called **Madayin**
2. This **Madayin** was established from the foundation of the earth
3. The **Madayin** has been the ancient practice of the people of North East Arnhem Land down through the ages
4. Through this ancient practice, the **Madayin** became the established rule of law for the **Yolngu** clan/nations.
5. The **Madayin** is a jurisdiction of law offering protection to its citizens

Yolngu see their **Madayin** as **dhuyu** (holy, sacred). It is not only holy because of its religious connection but both holy and sacred because of the holy sacred role it has in maintaining a system of law for the **rom wataṅu walal** (citizens), allowing them to live and enjoy the pleasure of their estates, in a state of **māgayamirr** (in peace, harmony, justice for all and no hostility).

In **Yolngu** law the **Madayin** has also been kept secret and restricted - except for the elements of it that need to be revealed to the public for public education and compliance. Strong sanctions still exist today for the violations of the secrecy code. This secrecy code was necessary to keep the codification of law very accurate over many thousands of years. This is done by creating a high demand

and a low supply, making knowledge of law extremely valuable. When something becomes valuable it demands of the keepers of the law a high level of maintenance and instruction. These same processes have been used by oral societies around the world to ensure the purity and perpetuation of their legal systems. Although this system of law is classed as oral it has many built-in codified patterns which can be 'read' by those who are literate in the system. This makes the **Madayin** a true system of law, beyond individual manipulation.

This system of law, the **Madayin**, establishes a jurisdiction that existed before European contact, and still exists today. It is indeed the only jurisdiction that is truly recognised as legitimate by **Yolŋu**.

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