

101 Makarrata the first way

In this podcast series, Rev. Dr. Djiniyini Gondarra OAM (DJ) and Richard Trudgen (RT) discuss the different ways the *Makarrata* peace-making process and ceremony can be used to reconcile legal issue between different groups. *Makarrata* is a Yolŋu Matha term now used in mainstream Australian community yet little is know of its real meaning. This series will remind Yolŋu of their own law to help return peace to their own communities while giving the wider Australian audience greater understanding as to the meaning of *Makarrata*. There are many similarities between Yolŋu law and the Balanda (mainstream) systems of law, where defendants go into police custody and face a trial if they have committed a crime. Often Balanda think Aboriginal law is all about “payback” or revenge, but these are just English language terms applied to final acts, such as spearing. This understanding does not take into account the many steps that have lead up to it. These steps, or legal processes discussed in this podcast, have been part of Yolŋu law, or the original Australian law, for thousands of years. They are highly detailed, profound and comprehensive, and originate from the great creator spirit, *Wanŋarr*.

Story No. 1: Legal refuge homes and *Makarrata* for defendants

RT: Yo, good morning *Gamarraŋ* (skin name for Rev. Dr. Djiniyini Gondarra OAM)

DJ: Yo, good morning *Wamut* (skin name for Richard Trudgen)

RT: *Gamarraŋ* we’ve been talking about that one subject as to how Balanda don’t recognise your law. Let’s keep talking about that one and I’ve got a question for you this morning.

DJ: That’s good, what is it?

RT: I’m a little confused. Why is it that you don’t fully practice your law now? I know your law is still in existence, but, for example, if one Yolŋu assaulted another Yolŋu and killed him, or *murrkaygum* murdered him...

DJ: The defendant...

RT: A defendant...

DJ: What do you do with him?

RT: In the past, you would have a process, you would sort it all out. Now you just stand back and the police come in. They think they have to jump in and sort it all out hey? Why is it you are not using your way of peace to sort it all out in this situation?



DJ: Well, the first thing is that our law has been conquered by Balanda law by them saying "your ways are bad. You might turn around and payback and kill that man."

RT: Yeah, the *wana-monunu*, the defendant. Balanda will say, or, they will think that your law is just payback law. 1

DJ: Yo and that's why they have to protect the defendant or *wana-monunu* as we call him. They have to arrest him and take him to jail.

RT: Yes, even though you've got *guykthun* where you can proclaim a *Mulka Wanga* or safe place for that *wana-monunu* defendant.

DJ: Yo, yes our law speaks strongly of that.

RT: That's not happening?

DJ: No it's not happening...

RT: And trouble you see is the Balanda don't know that you've got those *Mulka Wanga* safe houses that you can put a defendant into straight away. They don't know any of that situation.

DJ: We will send them straight to their mother's mothers place that will be their *Mulka Wanga* safe place.

RT: So you send them straight to the mother's mothers family for protection?

DJ: Yo, yes we will tell them to go there and wait. And then we will *guykthun* proclamation that place so that no trouble can come there after them.

RT: So, it's like they're being sent to an embassy and you will then proclaim that place under law, under traditional law that nobody can go there and touch that person, that defendant hey?

DJ: Yo, yes you be able to wait there for the *Makarrarta* peace ceremony to sort it out.

RT: See *Gamarran*, no Balanda know that – the Balanda lawyers, the Balanda judges, Balanda everything, they don't know that you've got a system of protection for defendants, even if they've murdered somebody or like...

DJ: Manslaughter.

RT: Manslaughter, yes even in a manslaughter situation or an accident situation, straight away you can proclaim that place and it's usually the mother's mothers home. The grandparents on the mother's side.

DJ: Hmm

RT: And nobody else can go there and touch that person hey?

DJ: If somebody goes there, this is the problem, sometimes it happens. Because of the anger; they are very hot with anger. Sometimes people go there: "No we will

just go and challenge them". And what will happen now. We say *mokuy mokuy*, dead person for dead person. *Mokuy mokuy*, corpse for corpse; it means you have taken and we will take. But that's the wrong way. The leaders will say, no and the *Madayin* law will say no, don't do that, it should be sorted out through a process of *Makarrata*, a peace making process and ceremony.

RT: Right. So, people will feel revengeful. They feel as though they need revenge yeah? You killed one of ours, we will kill one of yours, that is what they will feel?

DJ: Yo, but they won't say "no wait for the *Makarrata* peace making ceremony..."

RT: But the law says "no, wait for the proper due process", where you can have the *Makarrata* peace making process and ceremony.

DJ: Yo

RT: And all that legal way in between, up to that. Hey?

DJ: He will only be wounded, they will not kill him. The spear will not kill him, it will only go into his thigh. And when that happens they will take everything away from him and he will live without anything.

RT: When you get the *Makarrata* and if they decide after they have the court case, your court cases. That's in the *Makarr-garma* public legal chamber where you have the court cases?

DJ: Yes *Makarr-garma* public court cases.

RT: The *Makarr-garma* is in the public court cases about what happened, the accident or whatever. And in these you have *djungaya* from both sides, you have lawyers from both sides testing out, sorting out what is the true story about what really happened... and when they come to a conclusion, they come to that point where they say, yes he killed him and then there can be the *Makarrata* peace making ceremony where he's speared only in the thigh?

DJ: There will be a number of spears thrown at him, that Yolngu, and there is no way that is where it stops. A number of spears are thrown at him and he would straight away use the action from his own *Balyun* haka ceremony. Maybe he will run as the shark. He will do his *Balyun* haka.

RT: He does his own personal *Balyun* haka?

DJ: He will do the *Balyun* haka right up to the family of the of the dead person. He will have to have to face it; he will have to face the consequences.

RT: Yeah, let me say it. He faces two or three spears, he dodges them and then he does his *Balyun* haka, his special *Balyun* haka up to the family and when it gets up to the family, the family *djungaya* executor, will then spear him in the thigh and everybody else says then, they'll say, *bäyarra* forgiven and forgotten.

DJ: Yes... they'll hold him by the hand and say...come this way.



RT: So, they'll say, it's finished, completed and then they'll hold out their hand and welcome him into their family, yep?

DJ: Yo. That's number one.

RT: That's the first way it can happen. We're running out of time again, as always, let's come back again and we'll keep talking about it.

DJ: Yo, yo.

Story No. 2: Each clan has a refuge embassy for protection of defendants

RT: We're talking about Yolŋu law and why Balanda don't recognise it. I can see from what you were saying before, *Gamarran*, that you've got procedures for ah...

DJ: *Wana-monunju*, defendants.

RT: When they have murdered somebody or committed a crime. But Balanda just jump straight over into their naming of your law and your culture. And they say, "Aboriginal law is all about payback".

DJ: Yes they jump straight to that. Because they say our law is defined around payback.

RT: Yes. And you know it's a strange situation here because the Balanda and the Balanda Police would say it's our job to protect the defendant hey.

DJ: Hmm

RT: That's what they'd say straight away, it's our job to protect the defendant. But Yolŋu law is exactly the same. Your law says the defendant should be protected, he should go off to the mother's mothers people, the *märi* (grandparents on the mother's mother's side) and put him into a *mulka-wäŋa*, like a refuge or a safe house.

DJ: A *Mulka-wäŋa yaku mirr*, a safe house with a big important name.

RT: It's a bit like they can go into an embassy, which has a big name on it in law.

DJ: Hmm

RT: To protect that person, people can't come inside there, hey.

DJ: Yo. I am just going to use a picture to give you an image example.

RT: Yep, okay.

DJ: Your *gutharra* grandson has killed somebody – he has committed manslaughter. He has speared somebody. All right?

RT: Yes

DJ: He will go quickly to a place called *Burrthi Gawala*, or home of the king brown snake. That is your home *Gawala Rirmulmul*.

(Each *Bäpurru*, corporate clan or tribal group, has their own *mulka-wäna* safe haven home. And a particular "clan emblem" that defines their particular *mulka wäna* safe haven home. For the *Bäpurru* that Richard Trudgen is adopted into, the name of the safe haven is *Burrthi Gawala Rirmulmul*, or the king brown snake nest).

RT: He goes straight to that place for protection, from his grandparents on his mother's side.

DJ: Because that place or home bears the image of the home of a snake, the king brown. The snake is there, he's aggressive, if somebody comes in, bang, can you see the picture?

RT: Yes, so he goes to the place represented like, we could say in Scottish terms, the hall of the king brown snake, a big castle where the brown snake is to protect him, hey?

DJ: Yo, yo, and if somebody sneaks in, you're dead!

RT: Because it's a situation in law, people know that that they can't come there because if they try to break in or anything, the guards and everybody there has the authority to even kill them if necessary, to protect that defendant hey?

DJ: Yo, yo.

RT: And I think that's the same in Balanda law because if the police, for instance, put somebody in what they call "protective custody" then they put the defendant in inside a jail.

DJ: Hmm

RT: And if somebody came there to try and create trouble with that defendant, the police there can use reasonable force. Now reasonable force means they can just shut them up or push them back. But if they come with spears or guns, the police then could also use guns to shoot them.

DJ: Yo, yo can you see it?

RT: Yeah, that's the same system as the Balanda system, what the Balanda call protective custody, you've also got that same protective custody. It's the same as what they talk about.

DJ: Hmm

RT: And you have safe haven homes in every community that have got those names on them?

DJ: Yo, all *Bäpurru* corporate clan groups, however many there are have *Mulka* safe haven homes.

RT: So some houses, for example like at Galiwinku have got that name on them that could be where there's refuge?

DJ: Yo

RT: That embassy could be claimed for that person to protect that person yeah?

DJ: Hmm, hmm.

RT: So what happens when some of those houses around Galiwinku are broken down and new homes built now? Will that name go over onto that new house, hey?

DJ: Yeah it's the housing, but I'm living in that house, when I go to live in that house it becomes my *Mändi* (the *Golumala* "clan emblem" of fire, their *mulka wänja* safe haven home).

RT: So when you go and live in that house, it becomes your *Mändi*, yeah?

DJ: Yeah, that is my *Golumala* (DJs clan name) my *Mändi*, so nobody comes here. What lives there is fire. Fire is burning fire.

RT: Right.

DJ: My *Balyunmirr* haka is fire.

RT: And if you go to live in that place then that place will then take on that name, yeah?

DJ: Hmm.

RT: You will legally give a name to that place?

DJ: We will not legally give a name to that place, but as soon as they go in, I have a protection of that, By law.

RT: By law, by Yolŋu law.

DJ: My *Bäpurru* (corporate clan group) will say that it's your house, you go in, it becomes your *Mändi*. That's the symbol (over that house) when I'm living there and you will never go in without my authority or my law. I have two legal authorities: *Mändi*, fire, and *Nalkan*, barracoota fish. The very aggressive one – it cuts other fish or anything in half.

RT: So there are these symbols of law that go right back, that were given to you by the Creator Spirits, hey?

DJ: Yes, both *Barama* (male spirit creator) and *Djaŋ'kawu* (creator sisters) gave us this system of protection and we don't know who gave it to them but it must be the great creator spirit, *Waŋarr. Mimaŋ*, the unseen unknown one.

RT: So this protection system comes from right back, the great creator spirit through the male and female creator agents, and then given to each clan to create a law and order situation even around something like murder or accidents where

somebody is assaulted or hurt.

Gamarra, I can see why Balanda don't recognise your law. And it's to do with the confusion around it and with Balanda naming your law and culture. They put not so good words like "payback" and other things around it.

DJ: Yo, because that is what the people think. Our people are wrong too, our people are using this word "payback" too instead of using *bäyarra* (reconciled, forgiven and forgotten).

RT: Yeah, and that's what happens because people follow the Balanda and start to use that same words that the Balanda put there. And we know the Balanda put those words there, like payback. Why do we know that? Because everything you've said about your law, you've used Yolŋu Matha words for, but these two words come from English: pay back. So where did they come from, they came from Balanda. They renamed your culture and law.

DJ: Yo.

Story No.3: *Makarrata* process through third parties

DJ: I want to ask you one question: a lot of us see this, not just me, a lot of us. Where does this term "payback" come from? Whose name is this? Where they say our law is payback. Where they say we spear our defendants, and that our *Makarrata* peace making process and ceremony is just "payback".

RT: Well first thing we can see straight away is that it's English, and it came from Balanda. And it started right back close to Sydney somewhere, where Balanda were seeing Yolŋu law and they were thinking there were no systems of law, no peace and order where you were sorting things out, where you were looking for the foundational evidences, the true stories as to what happened.

They didn't see the *mari-gutharra*, grandmother-grandchildren with the Yothu Yindi, the mother's people's children sorting it out. And they didn't see the citizens talking together sorting it out, trying to find out which was, what was the true story and all that. They didn't see any of that, they just saw the last thing, yeah.

DJ: They saw our *Makarrata* peace ceremony and they concluded it was payback.

RT: Hmm

DJ: Our *Makarrata* law is not payback – let me give you a picture. Say somebody spears one of my *gutharra* grandchildren, or my *gäthu*, child. And they spear them and they kill them. I am a *djirrikay* political leader, that makes me a top leader in relation to my clan system of law.

RT: So you're a political leader of your family, a *djirrikay*.

DJ: Yo. This is what the law said in the past. I would say how many *Djungaya*

(traditional police) have I got. I would call for them. And I would say to them: I want a Makarrata, peace-making ceremony. I want you to go and leave a mark somewhere where those other people (the family of the accused) are going through. On some path that they frequent.

You don't talk to them but you leave a message stick somewhere where those other people will receive the information, get the message. They don't go and talk to them.

RT: So in that case, traditionally, before in the past you would have left a message stick for the other people?

DJ: Yes my *djungaya* will take the message stick.

RT: your *djungaya* not yourself, yeah?

DJ: Yo, and he'll leave the message stick on the *dhumbalbal* (public trading track). He doesn't go and approach the enemy.

RT: Yeah, he doesn't go and make trouble with the other family.

DJ: he just put it there because that's the track. And they know to do the same thing, backwards and forwards continuously.

RT: They'll put a message back same way.

DJ: Yeah they know where the victim's family travelling paths are, where the movements of that family are. So, the arrangements are going through the message sticks.

RT: Would that still happen, sort of the same way today if, if Yolŋu were to do that?

DJ: No, not today. Today it happens through the phone.

RT: But you still wouldn't approach them straight up?

DJ: No, no you would talk to somebody else, another *Bäpurru* corporate clan group.

RT: So you'd talk to another family, so there would be a third party family involved?

DJ: Yo, and they will mention where the place is where the *Makarrata* will happen and all those sorts of things.

RT: So the meeting place where you come together will be organised through third party people so that people don't get upset with each other until it's sorted out properly, talked out properly?

DJ: Yo, hmm

RT: And because this is *rom* law, the law going back to the *Djaŋ'kawu* (creator sisters) and *Barama* (male spirit creator)

DJ: Yeah we will follow the track laid down by them.

RT: So the “payback” is the wrong name, it’s the wrong name that Balanda are giving to Yolŋu law?

DJ: Yo. There’s a system of law and there’s a track to follow. However, there’s one thing that we have to get very clear, because some people of course can get angry and upset, and they have to challenge, they have to go. They have to break the law. But they have to be stopped.

RT: So people will get upset and be revengeful and want to break the law and just payback, pay them back quickly?

DJ: Yo, yo, yo

RT: But the law stops them?

DJ: it’s done properly at the *Makarrata*. So both families publicly witness the whole process.

RT: So whatever the sanction is agreed to, is then also publicly witnessed by everybody?

DJ: Hmm. So the *Makarrata* process can take many years, sometimes. Sometimes one year, sometimes two years.

RT: Wow that’s a bit like Balanda courts, it can take many years.

DJ: the process, yes.

RT: To sit down could take one or two years to work out...

DJ: what was the problem, the cause of the trouble, what started the whole thing, how did it get worse? What comes between them, what made them upset? Who was the *gorruŋal*, the initiator of the trouble, or the *djugu watangu*, contract owner if it was a hit job? who forced him to do this, was something said or was it some sort of assassination process? Meaning was there are secret plot to kill that man.

RT: Get out all the evidence, was it his own action or did somebody even give him a contract to do it?

DJ: Yes it could have been a contract given to him – he might have a contract in hand. They have to follow all those processes and connections.

RT: Find out all the evidence and bring it out into the open, into the public.

DJ: Yo, yo all these processes are to do with *mägaya*, peace.

RT: All these steps in the law are to do with *mägaya* the big peace that should be created, yeah?

DJ: Yo.

RT: If it’s put into action, but the English term “payback” just rubs it all out and stops it all?

DJ: Hmm, the law that barranga'yun (speaks, declares, pronounced itself) to us is honestly not "payback". It (the law) says you snatched away from our mulka wanga safe place of refuge. From our Mändi Mulka Wanga (fire safe haven), you snatched my grandchild from it. You took him and murdered him, you committed manslaughter, you speared him to death. Therefore, you have taken the law into your own hands. The consequences for your actions, the law says, is that you have to face the Makarrata (peace-making process and ceremony). It's not payback. It's the bäyarra law, forgiven and forgotten, reconciling in front of witnesses, and witnessed by all.

Story No. 4: *Bayarra* reconciled through process of law

RT: I can see the main problem is because of English terms – the Balanda have named these terms not Yolngu, like the word payback. However, is payback really your law, or what's your law?

DJ: Our true process of law was laid down by *Djan'kawu* (creator spirit sisters) and Barama (male creator spirit). This is the real law. If you kill or murder someone and you are then the defendant you need to receive the sanction from the *Makarrata*. Reconciliation will be found through this process.

RT: So the creator spirit said if you murder somebody or assault somebody really badly then you have to face the *Makarrata*, the peace making ceremony and you have to face the sanctions of law.

DJ: Yo, that is the process.

RT: That's the way it should happen

DJ: Not the lawless way of revenge killing. Because you broke the safe living sanctuary for a Yolngu human being.

RT: You broke *Mulka Wanga* (the safe living sanctuary) for someone. What do you mean by that when you say you broke open the *Mulka Wanga*?

DJ: You have taken the life of that person from that *Mulka Wanga* (safe haven). You have snatched authority from that private home or place. And now you're a defendant.

RT: Oh I see.

DJ: And now you need to receive reconciliation through the process of *Makarrata*.

RT: So it's not just that you've taken a person's life, but you've taken a person's life from that particular, as I say probably in a Scottish way, that big hall, the hall of that clan?

DJ: Yes.

RT: You've taken a life from that corporate clan group, and therefore you have to face the sanctions of law, yeah?

DJ: Yo

RT: That rubbish payback stuff came from the first Balanda settlers when they arrived in Australia. And they looked at the actions of Aboriginal people and created the naming, back then, and they made up those names, right back 200 years ago. And Balanda have been naming your culture since.

DJ: Yo

RT: they really don't know your way of law. This is true *Gamarran*. They don't know the *mägaya* way, the peaceful way of Australia, of Australia's original law.

DJ: Hmm, hmm.

RT: For thousands of years you held and maintained this law. So, if we don't use that word payback, what is the word we should be using?

DJ: *bäyarra*, forgiven, forgotten, reconciled. *Rom-kurru*, through a system of law.

RT: *Rom-kurru*. And how can we say that in English, that's like reconciled through the law, hey?

DJ: Yo, yo.

RT: Reconciled through the law, reconciled is *bäyarra* hey?

DJ: Yo, through the law. *Bäyarra rom-kurru*, reconciled through a process of law. You don't take the defendant's life. You can't kill him. You can't spear the defendant to death. You use the law to *Bäyarra* reconcile through a process of law. Reconciled through the *Makarrata* (peace-making ceremony) process.

RT: And that's the real way of Yolŋu law, not a falsehood.

DJ: that's the real Yolŋu law, not a falsehood.

RT: And so that's the Yolŋu law

DJ: this is one Yolŋu law. And later on I'll show you the second ways of law that exist.

RT: Right, so the Makarrata law is one way of this law. And in another program we're going to look at some of the other ways of law to sort out a problem. When somebody is assaulted or murdered. But the main thing we are talking about here is this *Bäyarra rom* law, the law of reconciliation, hey?

DJ: Yo, not *bäka-bakmarama* payback, take revenge.

RT: Because you said to me once if I was to go and assault a *wana-monuŋu* defendant Yolŋu, the law would speak to me and say no, that's the wrong way.

DJ: Yo, you then become the *wana-monuŋu*, defendant.

RT: Another defendant, because you've broken the law?

DJ: Yo.

RT: You've become a criminal, as we say, under the law, yeah?

DJ: Yo.

RT: Because that's the incorrect process (of law). That's not the right way to do it.

DJ: Because it's just in your mind – it says I want to assault and kill that person. But the law says to you if you kill him, then you become the *wana-monuŋu*, criminal/defendant at law.

RT: Yeah, so your mind might be telling you, yes, I want to do revenge killing, eye for an eye, life for a life, like that.

DJ: Yo, *mokuy yan mokuy*, dead one and dead one.

RT: That's what your brain would be saying, it would be telling you to do a revenge killing but the law would not.

DJ: *ŋayi a rom barranga'yun* the law *yaka*. The law speaks to our conscience and says no to us. You can only use the *Makarrata* peace-making legal process.

RT: We should use a process of law, hey?

DJ: Yo, a due process.

RT: A due process of law, we say that in English. Which is a legal process you use in a correct and proper way.

DJ: Yo. You know for Yolŋu, English is not our first language. And when Yolngu hear other people (English first language Balanda) talking about things, they don't understand. The words are put into their mouths, and they (Balanda) say, ho you mean dreaming, ho you mean payback, when really, Yolngu are talking about their law. Oh! You mean such and such, and the Yolŋu, because he doesn't understand what payback means, he doesn't know what dreaming means, so they say "yo, yo, yo, yo yes, yes, yes, you're right", because they think that Balanda are *gadaman*, clever and intelligent.

RT: Balanda are smart and should know better. No wonder we've got trouble *Gamarraŋ*, no wonder we've got problems. I think what you just said here sums it all up. Payback, the dreaming, primitive, hunter gathers, all that, they're all English words. The Balanda created this naming.

DJ: Hmm

RT: they're not bad people for doing it. They just created the naming. Just like Yolŋu create a similar type of naming for Balanda in the same way.

DJ: Cause what I've been fighting for, for a long time, this country Australia need to rewrite the history of Yolŋu as first people of this country. Where does it start? It starts in the school education system. So that when children are growing up, and told this was a falsehood, this was ah...

RT: So kids in schools can learn the true story rather than the false story of payback and dreaming and all that sort of stuff, yeah?

DJ: Yo.

RT: And that means that they have to learn your words and you have to put your words out in front.

DJ: Yo Hmm.

RT: Yeah. *Gamarraŋ* thanks for this program this morning, it's been really good talking about this subject again. We'll come back another day.

DJ: Yo

RT: And we'll go to those other ways. We'll go to those other ways where peace can be made between two families or between people where assault or even murder has occurred, when the law has been broken, and they have broken the *mägaya*, big peace.

DJ: Yo.