

# The Ranger uranium mine agreement revisited: spacetimes of Indigenous agreement-making in Australia

## AUTHOR BIO

Kirsty is a former lawyer, who worked for a decade at the Northern Land Council on various land rights and native title matters. Her PhD research draws on this experience to investigate the relationship between the Northern Land Council and the state, including through ethnographic research with current and former employees of the institution of practices of agreement-making.

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## ABSTRACT

Native title agreement-making or “contractualism” has become one of the dominant legible frames by which to understand Indigenous-settler relations in Australia, simultaneously providing benefits to Aboriginal groups yet constraining opportunities to configure these relations differently (Neale). In this paper, I examine the very first mining agreement of its kind in Australia: the Ranger uranium mine agreement negotiated in 1978. Borrowing Russian literary theorist Bakhtin’s analytic, I argue that the agreement is a “chronotope” with specific spatiotemporal dimensions. I focus on two key temporalities of the chronotope – the urgent temporality of development authorisation that conditions how, when and where agreements are produced, and the forward-looking “temporal inertia” that prospectively embeds these practices as precedents to be replicated in future mining negotiations. These two temporal logics shaped and were shaped by the spatial dynamics of the institutions tasked with negotiating the agreement, as events shifted back and forth between different venues. Exploring “how different legal times create or shape legal spaces and vice versa” (Valverde 17) reveals the productive and hegemonic conditions of the agreement chronotope in Indigenous-state relations in Australia as well as the compromised conditions for Indigenous institutional survival in the entropic north of Australia and beyond.

## KEYWORDS

extractivism, temporalities, development, settler-colonial relations, land rights

## Introduction

Under the terms of an agreement between certain Aboriginal people and the Northern Land Council a meeting of the Council will be held in Darwin on 2<sup>nd</sup> October 1978 starting at 2pm at the Don Hotel stop the agenda will be fixing a programme and formula for consulting Aboriginal people about the Ranger agreement stop please advise if you are able to attend stop please advise if you are able to attend. Stop if you cannot come you should arrange with your community to appoint a proxy with full voting rights and advise us of his name. (G. Yunupingu. Telegram. 25 September 1978. Unpublished internal document. Northern Land Council)

With the staccato urgency characteristic of its medium, Chairman Galarrwuy Yunupingu summoned the Northern Land Council's (NLC) members to a meeting by telegram at the Don Hotel, an iconic watering hole in Darwin. A week's notice wasn't long, given invitees lived in Indigenous communities across the top half of the Northern Territory (NT). But the stakes were high. The institution established to administer the Commonwealth Government's ambitious land rights experiment, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (*Land Rights Act*) was under pressure to approve the very first mining agreement on Aboriginal land in Australia. By the date of Yunupingu's telegram, the pressures of the Ranger agreement – which would authorise the extraction and processing of the Ranger uranium deposit in the Alligator Rivers region – had caused an internal fissure. Days earlier, on 19 September, some of its own elected members had launched court proceedings against the NLC. It was evidence the NLC “was on the verge of disintegration” (“A Great Effort”). The Ranger negotiations were at a standstill, at precisely the wrong time – the looming wet season threatened to further delay work at the Ranger site, risking international contracts and Australia's trade reputation.

The NLC did not disintegrate. Aboriginal Affairs Minister Ian Viner and Yunupingu signed the Ranger agreement on 3 November 1978. In the 40 years since, countless other mining agreements have been negotiated on Aboriginal land owned under the *Land Rights Act*, and after the High Court's decision in *Mabo*, on land across Australia subject to native title rights and interests under the *Native Title Act 1993* (Cth).

Former native title lawyer, David Ritter, has described this proliferation as a “native title market” which, via the banal mechanics of contractual exchange, has normalised relations between Aboriginal groups and the extractive industry (4). Neale and Vincent document a discursive shift in representations of Indigenous relations with the extractive industry and the state prompted by the recognition of native title in Australia. Where in the early 1980s Indigenous worlds were considered incommensurate with extractive imperatives, they are now framed as mutually beneficial (Vincent and Neale 302). Indeed, agreement-making or “contractualism” has become one of the dominant legible frames by which to understand Indigenous-settler relations in Australia (Neale). Agreements are now an essential component of the legal and bureaucratic architecture of project authorisation in Australia. A number of studies have demonstrated that “the substance of mining agreements have

changed little” since Ranger (Scamبارy 69; Cousins and Nieuwenhuysen; O’Faircheallaigh), typically canvassing financial recompense for mining, Indigenous employment and training, Indigenous business development, and cultural heritage and environmental protection. While mining royalties are an important, if contentious, source of revenue in the absence of sustained state-supported alternatives (Langton), scholars have also highlighted the constraints of these agreements in terms of their claimed benefits and underlying inter-party power differentials (Scamبارy; Ritter; Altman), as well as their discursive delimitation of alternative Indigenous-state configurations (Neale 21). In recent years, the threat of anthropogenic climate change, its projected disproportionate impact on Indigenous people and lands, and its causal connection with settler-colonial capitalist modes of extraction premised on Indigenous dispossession (Davis and Todd), have caused scholars, activists and the wider public to question how things might be enacted otherwise. But on the flip side of calls for its destabilisation, contractualism may hold clues for understanding the stubborn survival of some Indigenous institutions in Australia while others have been dismantled (for example, ATSIC in 2005) or hold unrealised potential (for example, the proposed constitutionally-enshrined Indigenous “Voice” to Parliament).

The premise of this article is that interrogation of the hegemonic yet resilient discourse of “contractualism” requires an understanding of the practices that constitute it as knowledge. The telegram quoted at the start is from the NLC’s internal archive of the 1978 Ranger negotiations (“the Ranger Library”), a collection of documents that I discovered by chance when I started my ethnographic research at the NLC. Prompted initially by my affective sense of familiarity with the form, type and substance of documents of the Ranger Library arising from my previous work as a lawyer at the NLC, I critically examine this archive to explore the conditions that precipitated the first agreement of its kind in Australia. The social and economic effects of the Ranger agreement have been well traversed (Scamبارy; O’Brien; Lawrence; AIAS; KRSIS; Levitus). I am here concerned with the agreement’s constitutive componentry – the emergent practices developed and deployed by the NLC that led to its formation. These knowledge-making practices, I argue, became the blueprint for subsequent agreements, persisting over time through replication and routinisation.

I show this using a “chronotopic” analysis that centres the *temporalities* of the production of the Ranger agreement and how they intersected with the *spatialities* of agreement-making at the NLC. Mariana Valverde suggests that socio-legal scholars turn to literary theorist Bakhtin’s typology of the chronotope (literally, timespace) to understand “how the temporal and the spatial dimensions of life and governance affect each other” (Valverde 9). Bakhtin used the concept to describe the interconnectedness of representations of time and space in literature, which show how “time, as it were, thickens, takes on flesh, becomes artistically visible; likewise, space becomes charged and responsive to the movements of time, plot and history” (Bakhtin in Valverde 10). The “literary artistic chronotope,” Bakhtin argues, is a formally constitutive category of literature where “spatial and temporal indicators are fused into one carefully thought-out, concrete whole,” defining literary genres and motifs (84). Chronotopes are mobile, and reappear across

genres to advance specific narratives, doing particular indexical work to shape meaning. While multiple chronotopes may co-exist, certain chronotopes gain hegemonic force to constrain actors and actants, placing “conditions on who could act, how such actions would be normatively structured, and how they would be normatively perceived by others” (Blommaert 95-96).

Extending this heuristic beyond literary studies, chronotopic analysis is a way of revealing how taken-for-granted timespace arrangements are embedded within particular socio-cultural practices. Valverde invokes the concept as a tool for sociolegal scholarship, arguing that chronotopes provide a way of understanding how legal practices and formations are constituted within and by particular spacetimes. One example she gives is the courtroom, which has not only distinct spatial characteristics, but also temporal dimensions without which the court does not come into being: “the spacetime in question is only a court of law at certain times. At other times, it is “merely a room in a public building” (Valverde 15). The courtroom as a chronotope has become hegemonic because it is a site which constrains particular legal actions, meanings and consequences. In particular, and as accepted by legal actors who interact with the courtroom as well as the wider public, for a legal ruling or judgment to be accepted as valid it “has to be issued in a specific, consecrated indoor space at a particular time” (Valverde 18).

Adopting Valverde’s chronotopic analysis, my contention here is that the significance of the Ranger agreement cannot be appreciated without understanding its spatiotemporal dimensions. Agreements happen in particular institutional places, at specific times. The “agreement chronotope” that clotted during the Ranger controversy has since been reproduced to authorise development projects on Indigenous-owned land, assuming hegemonic force that has spilled outside the NLC to shape the way in which native title agreement-making is enacted in other institutional contexts in Australia. In this article, I foreground two temporal characteristics of the agreement chronotope – the urgent temporality of development authorisation that conditions how, when and where agreements are produced, and the forward-looking “temporal inertia” (Khan 80) that seeks to prospectively embed these practices as precedents to be replicated in future mining negotiations and other institutional interactions. These two temporal logics shaped and were shaped by the spatial dynamics of agreement-making at the NLC, as events shifted back and forth between different venues. Exploring “how different legal times create or shape legal spaces and vice versa” (Valverde 17) reveals the productive and hegemonic conditions and practices that have made contractualism so dominant in configuring Indigenous-state relations in Australia since that time.

### **Ranger origins: introducing three irreconcilables**

Before moving to my own unexpected encounter with the Ranger Library, some background is necessary, with a caveat. The version of the Ranger controversy (including its historical antecedents) I outline in this article is told from the perspective of the nation-state and its institutions (including the NLC itself). It glosses and elides many possible *other* ways that the history of Ranger

can be told, including by the Mirarr traditional owners themselves as well as those who actually experienced the events. This choice is deliberate: I am concerned primarily in this article with how dominant textually-inscribed knowledge practices and their spatiotemporal characteristics were elevated, made legible and ossified. Nonetheless, I recognise the contingency of this account, its reproduction of dominant power relations and its erasure of other perspectives, people and practices.

**Fig. 1** Galarrwuy Yunupingu, with Prime Minister Malcolm Fraser at Jabiru, 1978 [Source: National Archives of Australia, NAA A6180, 4/5/78/62]



That the Ranger agreement happened at all was due to a forced convergence of three “irreconcilable” state agendas in the one location (Tatz 118). Let’s track back to the early years of the Cold War. Eager to prove its mettle in the global nuclear arms race after World War II and caught in a double logic of colonialism where the Australian state was both coloniser of stolen Aboriginal land as well as colonised, Australia rushed to provide its allies with raw material for their nuclear arsenals as well as ample land (at Maralinga) for testing their lethal capabilities. Uranium was first extracted in large quantities at Rum Jungle from 1954, at the time the largest infrastructure development in the NT and its greatest economic hope. Its usefulness quickly depleted, Rum Jungle was decommissioned in 1971, but interest in uranium was spurred again in the late 1960s with the promise of a global nuclear power industry. Deposits were discovered close together in the NT between 1969 and 1973: at Ranger, Nabarlek, Koongarra and Jabiluka. In October 1974, Prime Minister Gough Whitlam signed the “Lodge Agreement” which set out a financing and ownership structure for the imagined Ranger mine that gave the Commonwealth a 50% ownership stake (yet saddled it with 75% of the infrastructure costs). The Ranger deposit seemed destined to be mined.

At the same time, another nation-building vision was brewing. The idea of the first national park – Kakadu National Park – conserving and showcasing the unique environmental values of the region predated the discovery of uranium

at Ranger (Lawrence), and in 1975 the *National Parks and Wildlife Conservation Act 1975* (Cth) was passed, generating the legal conditions for realising this possibility too.

The third confounding factor was Whitlam's proposed recognition of Indigenous land rights. Following the Woodward Inquiry into Aboriginal land rights in the NT commissioned by Whitlam after the unsuccessful Gove land rights case (*Milirrpum v Nabalco*), Whitlam promised to legislate for NT land rights. The Alligator Rivers region, where the Ranger uranium deposit was located and where Kakadu National Park was proposed, was one of the areas foreshadowed for land rights, its material physiognomies permitting its return to Aboriginal ownership at the precise time its development promise crystallised.

Whitlam's agenda wouldn't be realised under his prime ministership. Weeks after he had formalised the Lodge Agreement in October 1975, Whitlam was ousted and Parliament was dissolved. Malcolm Fraser's government pursued the same agenda of reconciling competing interests, with the *Land Rights Act* commencing on 26 January 1977. Many thought the bill watered down the original Woodward recommendations (Eames). But it was the conundrum of uranium mining at Ranger that saw the greatest dilution. The *Land Rights Act* provided that traditional Aboriginal owners, through the NLC, had the right to veto mining and exploration on Aboriginal land. However, this would not apply to the Ranger Project Area. Instead, the NLC and the Commonwealth had to make an agreement before uranium mining could occur. If there was a stalemate the Minister could appoint an arbitrator to determine the terms and conditions of the agreement and enter into the agreement on the NLC's behalf. Thus, while a policy decision was yet to be formally made about whether uranium mining would proceed, traditional owners were stripped in advance of one of the fundamental tenets of land rights legislation – the ability to veto mining at Ranger.

Whitlam had commissioned the Ranger Uranium Environmental Inquiry (or Fox Inquiry, after one of the Commissioners) in July 1975 to resolve the question of whether and how uranium mining should proceed. The second of two reports, released in May 1977, focused on all the different forces now in play in the Alligator Rivers region. Responding to strong local Indigenous opposition to the mine, the report said:

There can be no compromise with the Aboriginal position; either it is treated as conclusive, or it is set aside.... In the end, we form the conclusion that their opposition should not be allowed to prevail.  
(Ranger Uranium Environmental Inquiry 9)

The Inquiry instead recommended establishment of the Ranger mine, proclamation of Kakadu National Park, and the grant of freehold title under the *Land Rights Act* of land upon which Kakadu and the Ranger mine were to operate. These conclusions were unsurprising: the legal machinery to obtain precisely this outcome was already in place. On 25 August 1977, Prime Minister Fraser announced that uranium resources in the Alligator Rivers region would be developed under the Cold War legislative architecture of the

*Atomic Energy Act* with an agreement under the *Land Rights Act*, albeit absent a statutory veto by traditional Aboriginal owners.

### **Dirty Deeds Done Dirt Cheap**

One institution above others was tasked with giving all these entanglements coherence. The NLC had been created to represent Aboriginal people in the top half of the NT during the Woodward Commission. It became an independent statutory entity with the commencement of the *Land Rights Act*. While the NLC had opposed mining at Ranger during the Fox Inquiry, this could not be maintained. The removal of the veto put the NLC in the invidious position of negotiating an agreement for mining at Ranger on behalf of traditional owners, or run the risk of arbitration. Concurrently, the NLC had to negotiate a lease of the newly-granted Aboriginal land for stage 1 of Kakadu National Park under the *Land Rights Act*. They were greenfields agreements – the first of their kind in Australia. How would the newly-minted NLC will these untested entanglements into coherence?

In some senses, the NLC's reputation was a casualty. Despite its legal position, public accounts afforded little sympathy. In a wounding assessment, the doyenne of national Indigenous policy, Dr H.C. "Nugget" Coombs, said "some Aborigines believe that [the NLC] has ... become an agent of the Government" (Coombs 124; Parsons 138; see also Lawrence 103). The NLC was also accused of incompetence, securing an inadequate payment regime and environmental protections (Lawrence 102-3). Reflecting on it later, Nicholas Peterson, the anthropologist who assisted Woodward, wrote that the agreement was "certainly not one of the better mining agreements seen in Australia" (Peterson 450). Worst of all, the NLC was accused of overriding the wishes of the traditional Aboriginal owners in whose interests it was meant to be acting. These narratives were mobilised to heartbreaking effect in the 1980 documentary, *Dirt Cheap* (Hay, Clancy and Lander). The film ends with the final NLC meeting about the Ranger agreement at Oenpelli, and shows Aboriginal Affairs Minister Ian Viner strongarming the Oenpelli community into accepting the agreement with the NLC's collusion, despite the meeting's discomfort and rejection of the agreement only three weeks earlier. Images show Viner and Yunupingu signing the Ranger agreement with Aboriginal people (including senior traditional Aboriginal owner Toby Gangale) standing behind them. Gangale leaves the signing ceremony holding a gold pen given to him by a lawyer. The footage, audio and photographs of the meetings appear as incontrovertible evidence of the NLC's betrayal. It is a devastating critique.

**Fig. 2** Cartoon depiction of the final days of the Ranger agreement negotiations.  
 Source: *Chain Reaction* Vol 4 No 2/3 1978 p 82.



## The Ranger Library

My own research into these heady events happened accidentally. I was to undertake ethnographic research in the NLC's head office. Awaiting ethics approval, I started attending the head office in Darwin to plan. Exiting the lift on the Third Floor, I met 83 boxes, piled up and wholly inhabiting the dead space along the wall that divided the Section 19 Branch and the Legal Branch where I had worked for a lawyer for the previous ten years. This was colloquially known as the "Ranger Library," the NLC's internal record of all that had happened from the Fox Inquiry, through to the renegotiations of the Ranger agreement in the early 2000s. When I had worked at the NLC, these materials were housed on shelves in an annex holding the Legal Branch library. In deference to the important events that the files documented, attempts to move them elsewhere were resisted. However, since I had left the NLC a year earlier, these iconic documents had been boxed outside the lift, on their way to digitisation and offsite storage. Although I had not intended to study Ranger, I caved to the promise of an untapped archive.

As I read the files, at times it felt like a political thriller, with a fascinating mix of Cold War politics, cabinet secrecy, environmental crusaders, traditional Indigenous culture, partisan political wrangling, and unyielding government



pressure. Reading the chronologically ordered textual record of the Ranger negotiations, I was struck by a sense of familiarity. The issues have been on rinse-and-repeat in the 40 years since they were created: controversies over whether traditional owners have been consulted properly by the NLC, whether white employees were pulling strings in the background like puppeteers, whether the NLC is in collusion with the government, whether environmentalists use traditional owners as pawns to pursue their own agendas, and whether white Australia is able to believe that Indigenous people can in fact have agency amidst this conflagration. The close resemblance in the structure, form and substance of the 1978 documents and documents I have used and even authored during my time at the NLC was also remarkable, this realisation a marker of my own privilege within the institution as a settler lawyer who nearly 40 years later had replicated the textual practices revealed therein. Despite the fact that only a few people have had access to the Ranger Library – indeed, that barely anyone in the institution knew of its existence – the NLC’s record of these extraordinary events still seemed to haunt the institution.

### **Time compression: spacetimes of authorisation**

Using my initial affective response to 83 boxes as a pivot, I queried what had evoked such a strong sense of familiarity. I argue here that there were two *temporal* logics I recognised. First, there was the linear progression along which agreement-making proceeds at the NLC, with institutional practices “clotting” (Verran) in specific places at specific junctures. While the actual time it takes to complete this progression can vary, it is generated by the requirement under the *Land Rights Act* that approval to access Aboriginal land is sought by outsiders, commencing with an application to use land, and ending with the execution of an agreement authorising access. Second, the textual, social and material practices assembled during the production of the agreement were forward-looking, acting like legal precedents to structure, constrain and even bind future institutional action as they were replicated by NLC employees over time. NLC agreement-making practices seek to govern the future, as well as the present. I move now to consider these temporalities in detail, and how they intersected with space and law during the Ranger negotiations.

Initially overwhelmed by the towers of yellowing documents, my attention was drawn to the histrionic height of the tension, where everything nearly fell apart for the NLC: the 10 weeks between the initialling of the Ranger agreement by the NLC negotiator and the Commonwealth negotiator (25 August 1978) and its signing (3 November 1978). The key flashpoints referred to so far occurred then: the litigation against the NLC commenced on 19 September 1989, the meeting at the Don Hotel on 2 October 1978 and the tragic NLC meeting on 3 November 1978 documented in *Dirt Cheap*.

This period comprised a narrow window of the legal process of authorisation of the Ranger mine, and was structured by the provisions of the *Land Rights Act* that required the NLC to make an agreement with the Commonwealth for mining at Ranger, and to obtain the consent of the traditional Aboriginal owners of the Ranger project area to do so (s23(3)). It was part of the broader

legal machinery of authorisation of Ranger that commenced formally with the August 1977 announcement by Fraser that uranium would be mined at Ranger, but included the chess moves from the 1969 discovery of the Ranger deposit, like the Lodge Agreement, the Fox Inquiry, and the constrained affordances of the *Land Rights Act* itself.

In the capitalist logic that commoditises time “into a fungible unit to measure economic efficiency and productivity” (Richardson 27), this may seem a lengthy period. However, compared with other timescapes, such as the mineralisation of the uranium deposits some 400 to 600 million years earlier, and the date of human arrival to the region 65 millennia before, the legal authorisation of mining at Ranger under the *Land Rights Act* was a mere speck. This is partly a function of what Richardson calls the “compression” of time by environmental law, where triggers such as the application by a third party to exploit land “enable the law to allocate and terminate powers and obligations to increase convenience and efficiency in legal affairs” (Richardson 83). In the case of Ranger, the time to authorise the agreement was bracketed by the threat of arbitration, which could be triggered if the NLC refused or was unwilling to consent to mining. Time was, quite literally, of the essence.

**Fig. 3** The Ranger Library in boxes. Source: K. Howey



But the voluminous texts in the Ranger Library belied the depiction of the Ranger authorisation as a snapshot in time. The textual detail seemed to expand the narrow temporal aperture of the Ranger approval. That it took me 6 months to read and digest 10 weeks of documentation suggests how time can “thicken” and “take on flesh” in the Bakhtinian sense. Boxes of files documented this period, including over 122 media stories from broadsheets and tabloids around the country, in addition to file notes, consultation records,

legal advices, full council meeting minutes and transcripts, correspondence and Cabinet records of those events.

Each genre of document in the Ranger library is a snippet, each a magnitude. Each had a particular place-association that was tied to the institutional function it represented and who was enacting it. There were four key NLC spatialities evident in the documents: the cramped Darwin head office where a threadbare bureaucracy would perform the everyday work of the institution; the NLC's "full council" meetings where the NLC's elected or "chosen" arm comprising members from major Aboriginal communities in the NLC's region would consider and approve the agreement; the remote communities where consultations with traditional Aboriginal owners occurred; and lastly, the geographic location where the Ranger mine itself was to be located and which would be governed by the Ranger agreement. These spatial dynamics worked to produce the temporal dynamics of the Ranger authorisation, and vice versa. During the approval process, the action shifted back and forth between these spatial nodes, scrutinised from afar by a transfixed media and public. In what follows, I attempt to capture the pace of events, conceding that it is necessarily an impoverished account.

Negotiations with the Commonwealth had commenced in October 1977. Following round after round of tense negotiations, the Commonwealth and the NLC finally agreed to a payment or "royalty" regime on 25 August 1978, announcing to the media that agreement had been reached in principle. The final legal step, on the NLC's reckoning, was to call a full council meeting to approve the agreement by resolution. But as the humidity began to rise with the encroaching wet season, multiple storms were brewing.

The theatre of operations moved to the NLC's full council meeting to be held on 14 September 1978 at Red Lily Lagoon in Western Arnhem Land. While the formal minutes of the meeting are only three pages long (Northern Land Council. "Minutes of Ninth General Meeting." 14 September 1978. Unpublished internal document), this simplification hid the tumult. The boxes yielded numerous detailed, if incomplete, versions of events, including an 85-page transcript and a 50 page handwritten notation of the meeting. Indeed, the Red Lily Lagoon meeting was not one event but many, including the Executive Council of the NLC (made up of 8 council members representing each of the NLC's sub-regions) on 12 September, a "public" meeting on 13 September 1978, and a "closed" full council meeting on 14 September 1978. After a theatrical presentation "for and against" the Ranger agreement by two senior staff on 13 September, Yunupingu took the floor in a powerful address, asserting that the agreement was a defining moment in the relationship between Aboriginal people and the state, yet reminding attendees of the contingent nature of Aboriginal autonomy under the *Land Rights Act*. Yunupingu was aware that the Commonwealth Government had legislative power over the land council, saying "we just can't get away from those little red tapes tied around your neck" (Northern Land Council, "Transcript of Ninth Full Council Meeting." 13-14 September 1978. Unpublished internal document). Wide ranging and deliberative debate about the merits of approving the agreement and the role of the NLC followed, with non-Indigenous staff members remaining silent and eventually excluded from the

“closed” full council meeting on 14 September 1978 (of which there remains no written record). At the conclusion of this session, the NLC resolution to approve the agreement was conveyed to staff. The sophisticated debate at Red Lily covered not only the merits of specific clauses in the agreement, but also a nuanced discussion about the role of the NLC in the new political landscape for Aboriginal people in Australia.

This was not the reading to be given to the Red Lily Lagoon meeting in the media.

Five days later, on 19 September 1978 three of the NLC’s council members commenced court action for an injunction preventing the NLC from signing the Ranger agreement, obtaining an interim injunction restraining it from doing so (Northern Territory Supreme Court, “Orders in NTSC 703 of 1978.” 19 September 1978. Unpublished internal document. Northern Land Council). The nub of the case was a claim that the NLC had unlawfully consented to the agreement at Red Lily Lagoon, and failed to fulfil its consultation obligations under s23(3) of the *Land Rights Act*. The litigation followed a flurry of media articles which claimed intimidation and bullying tactics at the Red Lily Lagoon meeting (“Tapes Show Aborigines Intimidated”; “PM Bullied Us in U-Deal: Blacks”; “Big Pressure to Sign”; “Standover Tactics Alleged”).

Despite being the very first of many cases against the NLC, no record of this litigation remains on legal databases. The parties settled the proceedings three days later on 22 September 1978. Given the partial records of the Red Lily Lagoon meeting, and the lack of a court judgment it is not possible to know whether the litigation would have succeeded. There were, however, anomalies in the way the NLC had conducted consultations under s23(3) of the *Land Rights Act*. This required the NLC to be satisfied, first, that the relevant traditional Aboriginal owners understood and consented to the “proposed action,” and second, that any affected Aboriginal community or group had been consulted and given an opportunity to present its views. The NLC had not held separate consultations with traditional owners or “affected” Aboriginal communities after the agreement was settled in principle on 25 August. The last formal NLC consultation (of three) with traditional Aboriginal owners was held in July 1978, where traditional owners agreed that the NLC negotiators had authority to conclude negotiations if certain conditions were satisfied (George Chaloupka. “Re: traditional ownership of Ranger area.” 25 October 1978. Unpublished internal document. Northern Land Council). Notwithstanding the presence of some traditional owners at Red Lily Lagoon, the legal ability to give consent in advance of core terms being settled fell short of many people’s understanding of what was needed. But it was also clear that, as the Chairman read it, there was little time to delay.

The NLC capitulated, settling the proceedings on the basis that the Chairman would convene a full council meeting on 2 October 1978 to establish a program of consultations in compliance with s23(3) of the *Land Rights Act* (Northern Land Council. “Agreement between Dick Mulwagu and Johnny Marali No 1 and the Northern Land Council.” 22 September 1978. Unpublished internal document). NLC bureaucrats were casualties of the schism, with Yunupingu dismissing his lawyer and a field officer resigning in

protest (Gallacher). Members apparently wanted to call another Full Council meeting to declare all positions vacant and initiate an election ("A Serious Rift Is Developing"). Unable to adequately represent so many different clans, the NLC would soon implode ("A Great Effort"). In these circumstances, the decision to settle the proceedings was perhaps a pragmatic – albeit temporary – tactical retreat.

There was one item on the agenda for the 2 October 1978 meeting at the Don Hotel: “the programming for advising Aboriginal communities and Aboriginal people on the Ranger agreement” (Northern Land Council. “Agenda – Full Council Meeting.” 2 October 1978. Unpublished internal document). Although the meeting lasted for 4 hours (Loizou), the NLC’s formal minutes of the meeting at “the Don” are brief, recording the attendance of 31 council members, and the simple motion passed by those in attendance (Northern Land Council. “Interim Minutes of Full Council meeting held in Darwin on 2 October 1978.” Unpublished internal document):

That the Oenpelli group will notify the Northern Land Council which communities the lawyers will visit and then delegates from those communities will notify the Northern Land Council when they are ready for the second Northern Land Council meeting.

No other written record remains of this meeting. Distancing himself deliberately, Yunupingu had his Deputy, Gerry Blitner, assume the role of chair.

On 10 and 11 October 1978, the NLC convened a meeting at Oenpelli, located in western Arnhem Land. Oenpelli residents rejected the sentiment of the Don resolution. They – together with Gangale – demanded the NLC settle the Kakadu lease first, and delay the Ranger agreement indefinitely. Yunupingu had little choice but to endorse this decision, but warned those present: “doesn’t matter who the Government is ... we are still their objects to be pushed around ... forever and that’s a fact of life” (Northern Land Council. “Oenpelli Ranger Consultation Side F.” 11 October 1978. Unpublished internal document). The Oenpelli verdict was unanticipated. Key traditional owners appeared to have withdrawn their consent. The NLC had lost control of its own consultation process. The media speculated about what would happen next. Possibilities included arbitration (Holden), the use of the national interest provisions in the *Land Rights Act* to override lack of consent (Plater), legislative amendment (Hoare) and even death by spear for the Chairman ("Spear Threat to Land Chief"). Deputy Prime Minister Doug Anthony made his position clear: “the Government’s policy cannot be frustrated by the Aboriginal people, or any other people” ("Ranger Delay: Anthony Gives Warning"). But there was a plan.

The first step was another full council meeting to be held on 1 and 2 November 1978 at Bamyilli (now known as Barunga). Viner would attend. More amicable in tone, on the first day the full council sharpened its focus on whether the NLC had complied with s23(3). Viner addressed the meeting the next day, warning “the Government can’t go on not knowing ... when it is going to come to an end” (Northern Land Council. “Transcript Viner at

Bamyilli Meeting.” 2 November 1978. Unpublished internal document). The Commonwealth decreed that the brief aperture to secure an agreement had closed. Fatigued or resigned, the adversaries fell away. The NLC authorised the signing of the Ranger agreement. The next day, NLC members, together with Viner, travelled to Oenpelli for the meeting documented in *Dirt Cheap*. The NLC had already arranged for traditional owners to be in attendance. Viner and Yunupingu spoke to those assembled. If there was explicit consent given by traditional owners at the meeting, it is not recorded in the transcript. The transcript resumes after a break with Yunupingu thanking traditional owners for consenting to the agreement “in a quiet way, in an understanding way” (Northern Land Council. “Transcript Oenpelli meeting.” 3 November 1978. Unpublished internal document). They had little choice.

The agreement was signed at Oenpelli immediately afterwards on 3 November 1978. Both Yunupingu and Viner spoke to the press, highlighting the historic significance of a mining agreement being struck between traditional owners and the Commonwealth for the first time in Australia’s history (Northern Land Council. “Transcript of Viner at Oenpelli signing.” 3 November 1978. Unpublished internal document). After the theatrical tension of the preceding 10 weeks, the Ranger controversy subsided.

### **Temporal inertia: textual spacetimes**

While the 10 week period to obtain approval for the Ranger agreement was brief, time seemed to swell with the thickness and pace of events textually recorded in the Ranger Library as the NLC nipped out the core practices that would secure the necessary outcome. The action spluttered and stuttered between three key settings and back again: the office, the full council meeting and the remote consultation. This spatialised institutional componentry clotted for the first time during the Ranger negotiations, smoothing into a linear process that has remained more or less stable. To this day, the configuration comes into being when an outside party desires a material resource located on Aboriginal land. This necessitates a negotiation between NLC bureaucrats and the outside party (“the office”), a consultation with traditional Aboriginal owners and affected Aboriginal groups (“the consultation”), approval by the full council (“the full council”), and concludes with the execution of an agreement. Depending on how the action unfolds, these spatialities are flexible and can merge (such as the Chairman’s attendance at negotiation meetings) or overlap (for example, when multiple traditional owner consultations occur during the negotiation period). I have argued above that these spatially-hinged practices have a specific compressed temporality, that of project authorisation. Agreements are not randomly produced, but are catalyzed by the trigger of an application to use land and conclude with the execution of an agreement, with NLC practices coagulating within this temporal frame. It makes things that should be specific, part of a procedural norm. The agreement chronotope that governs the way time and space are configured in response to outside proposals intersects with and is indeed reinforced by other chronotopic forms that also fix temporally on the moment of project authorisation – these include environmental impact assessment processes, approvals granted under sectoral legislation (in the case of Ranger, an authority under the *Atomic Energy Act*),

and finance, sales and loan agreements between miners and others. All these processes fuse at the same time to force outcomes that often seem inevitable.

There is a further legal spatiality that stalked and shaped the urgent timing of the Ranger agreement: that of the state. The NLC was a creature of statute and its functions could be changed by the Commonwealth Parliament, as Yunupingu impressed upon his council members repeatedly. The state's spatial dynamics were evident in the cameo appearances by Fraser, Viner and Anthony at critical junctures, references to Ranger in Parliamentary Hansard, and in the numerous Cabinet documents considering Ranger that punctuate the Ranger Library chronology. While many at the time gave the threat of legislative amendment short shrift, Cabinet documents released thirty years later indicate that this was being actively considered throughout negotiations. Indeed, after the unexpected Oenpelli meeting on 11 October, the Commonwealth's "Uranium Task Group" was advising the Prime Minister on bringing "an early conclusion" to the negotiations, canvassing eight options ranging from allowing arbitration to run its course, to an amendment of the *Land Rights Act* declaring Ranger, Jabiluka, Nabarlek and Koongarra subject to the "national interest" provisions of the *Land Rights Act* which would have bypassed the need for an agreement altogether (Uranium Task Group). These appearances made it menacingly clear the Commonwealth had the power to drastically change the state of play. The NLC itself later characterised this threat as constituting duress, commencing legal proceedings against the Commonwealth challenging the validity of the Ranger agreement on this basis, which were eventually discontinued by the NLC. Since Ranger the Commonwealth has, in general, taken a less drastic route than that proposed in the height of the Ranger controversy, preferring instead to bolster the infallibility of the NLC's agreement-making processes. For example, amendments to the *Land Rights Act* were introduced in 1980 that meant that failure by the NLC to comply with its consultation requirements under s23(3) did not invalidate mining agreements, these changes publicly couched in the language of improving industry "certainty." In interpreting the NLC's exercise of these consultation functions for agreements, the courts have also tended to give the NLC substantial autonomy (see, for example, *Alderson v Northern Land Council* (1983) 67 FLR 353 and *Gondarra v Minister for Families, Housing, Community Services and Indigenous Affairs* (2014) 220 FCR 202). Nonetheless, not all interventions have been so benign: following pressure by the mining industry the traditional owner mining veto (and a significant portion of the NLC's jurisdiction) was removed in 1987 amendments to the legislation (the veto remains at the "exploration phase" prior to mining). The threat of state intervention via legislative amendment continues to stalk the NLC, but is ameliorated as long as it recursively reproduces agreements.

In addition to the immediate temporality of project authorisation, the Ranger chronotope was also temporally prospective. The practices that knotted together to produce the Ranger agreement had a future-orientation. The agreement structured future operations on the Ranger site, embroiling the parties in unceasing "paperfare" as the Mirarr have attempted to hold both the state and company to account for its 1978 commitments and the response to over 200 environmental incidents in the mine's life (Lea, Howey and O'Brien). But its prospective temporality also ricocheted to other agreements: the Ranger

project had afterlives beyond its own localised radioactive toxicities. The Chairman, arguably more so than anyone, understood what was at stake. At the Red Lily Lagoon meeting Yunupingu said “we are not really discussing Ranger; what you are discussing is the future in part of the Land Right movement” (Galarrwuy Yunupingu, Red Lily Lagoon meeting, NLC Executive Council minutes, 12 September 1978). The NLC’s Ranger agreement and its originary practices would be key to the NLC’s survival and the blueprint for all that came after. This “temporal inertia” worked to constrain and coordinate future institutional action and is characteristic of law’s temporality, involving the “veneration of tradition, predictability and continuity” (Richardson 88).

Evoking constitutional lawyer John E. Finn, we might see the production of the Ranger agreement as a “constitutional moment” in Indigenous-state relations, an attempt to “fashion the future – to forge institutional patterns and cultural folkways of political and social experience” (Finn 4). Various NLC practices, and the power dynamics embedded in them, were caught in the net of institutional tradition the moment they coalesced. Perhaps most obviously, the Ranger agreement would be used as a precedent for future NLC lawyers to incrementally modify for new proposals. But the internal NLC spatial and temporal dynamics of the office, the full council meeting, and the consultation would also be replicated for future agreements. While not identical, native title agreements are modified iterations of the Ranger chronotope, involving a time-constrained set of practices comprising an application by an outsider to access land subject to Indigenous interests, agreement negotiation, consultations with and authorisation by native title holders, and approval and execution of the agreement by the relevant native title representative body or prescribed body corporate. Together, the various social, textual and material practices that produced the Ranger agreement would establish a venerable lineage that would constrain future institutional action and reproduce the spatial application of the Ranger chronotope across multiple locations in the NT and beyond.

## Conclusion

In 1982, anthropologist John von Sturmer wrote that a “new ecosystem” had been created in Australia through the uneasy convergence of uranium, conservation, tourism, and Aboriginal rights (von Sturmer 70). I argue here that a product of this union was the NLC agreement, a powerful chronotope with intertwined spatiotemporal dynamics that has been reproduced and routinised “by relentless, recursive mimesis” (Haraway 35). Instead of the forecasted implosion, the chronotope gave the NLC an indispensable role in the legal machinery of major project authorisation, thus ensuring its institutional resilience in spite of often excoriating public critiques that had their genesis in the *Dirt Cheap* narrative of NLC betrayal.

However, while the chronotope elevates certain practices and the power dynamics embedded in them, it also marginalises alternative configurations of the relationship between Indigenous people, the extractive industry, and the state. Neale suggests that native title agreements “constrain the space for



opposition,” and can promote “political quietism” (Neale 23). In the NT, for example, opposition by some Aboriginal groups to the recent lifting of the moratorium on onshore hydraulic fracturing or “fracking” is routinely countered by an assertion that traditional owners have consented via native title or land rights agreements, often negotiated many years prior when the wide-ranging environmental impacts of such developments were not known. Once such agreements are executed, the time for dissent passes and the parties are locked in time to whatever was negotiated then. The opportunities for Aboriginal groups to express credible views outside or contrary to the muzzling institutional spacetimes of agreement-making are hampered. A chronotopic analysis of the NLC agreement breaks open and makes visible the practices that produce these hegemonic power relations. Looking at how time and space organise each other in the context of the Ranger agreement gives us the opportunity “to enter the contingency, thickness, inequality, incommensurability and dynamism of cultural systems of reference” (Haraway 42) and to work out the compromised conditions for institutional survival in the entropic north of Australia and beyond.

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### **Works Cited**

“Big Pressure to Sign.” *NT News* 18 September 1978.

“A Great Effort Put at Risk.” Editorial. *NT News* 20 September 1978.

“Pm Bullied Us in U-Deal: Blacks.” *Daily Telegraph* 18 September 1978.

“Ranger Delay: Anthony Gives Warning.” *Sydney Morning Herald* 17 October 1978.

“A Serious Rift Is Developing within the NLC.” *PM Program*. ABC, 1978.

“Spear Threat to Land Chief.” *Sun Pic* 13 October 1978.

“Standover Tactics Alleged on Ranger Pact.” *Sydney Morning Herald* 19 September 1978.

“Tapes Show Aborigines Intimidated on Ranger: Nt Mla.” *Australian* 15 September 1978.

AIAS. *Aborigines and Uranium: Consolidated Report to the Minister for Aboriginal Affairs on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory*. Canberra: AGPS, 1984.

Altman, Jon. "Indigenous Rights, Mining Corporations, and the Australian State." *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. Eds. Sawyer, S and E.T Gomez. London: Palgrave Macmillan, 2012.

Bakhtin, Mikhail. *The Dialogic Imagination: Four Essays*. Trans. Emerson, Caryl and Michael Holquist. Austin, Texas: University of Texas Press, 1981.

Blommaert, Jan. "Commentary: Mobility, Contexts, and the Chronotope." *Language in Society* 46.1 (2017): 95-99.

Coombs, Dr HC. "The Impact of Uranium Mining on the Social Environment of Aborigines in the Alligator Rivers Region." *Social and Environmental Choice: The Impact of Uranium Mining in the Northern Territory*. Ed. Harris, S. Canberra: Centre for Resource and Environmental Studies, ANU, 1980. 122-35.

Cousins, D, and J Nieuwenhuysen. *Aborigines and the Mining Industry: Case Studies of the Australian Experience*. Sydney: Allen and Unwin, 1984.

Davis, Heather, and Zoe Todd. "On the Importance of a Date, or, Decolonizing the Anthropocene." *Acme* 16.4 (2017): 761.

Eames, G. "The Central Land Council: The Politics of Change." *Aborigines, Land and Land Rights*. Eds. Langton, Marcia and Nicolas Peterson. Canberra: Australian Institute of Aboriginal Studies, 1983.

Finn, JE. *Constitutions in Crisis: Political Violence and the Rule of Law* Oxford: Oxford University Press, 1991.

Gallacher, Jamie. "Arbitration a Write-Off." *NT News* 19 September 1978.

Haraway, Donna. *Modest Witness Second Millennium. Femaleman Meets Oncomouse: Feminism and Technoscience*. New York: Routledge, 1997.

Hay, David, Marg Clancy, and Ned Lander. *Dirt Cheap*. Marg Clancy, David Hay & Neil Lander [production company], Sydney, 1980.

Hoare, Judith. "Viner Talks Tougher." *Australian Financial Review* 13 October 1978.

Holden, Doug. "Govt Will Demand Decision by NLC." *The Australian* 13 October 1978.

Khan, Liaquat Ali. "Temporality of Law." *McGeorge Law Review* 40.1 (2009): 55-106.

- KRSIS. *Kakadu Region Social Impact Study: Report of the Aboriginal Project Committee*. Canberra: Supervising Scientist, 1997.
- Langton, Marcia. *The Quiet Revolution: Indigenous People and the Resources Boom*. Sydney, New South Wales: HarperCollins Publishers Australia, 2013.
- Lawrence, David. *Kakadu: The Making of a National Park*. Melbourne: Melbourne University Press, 2000.
- Lea, Tess, Kirsty Howey, and Justin O'Brien. "Waging Paperfare: Subverting the Damage of Extractive Capitalism in Kakadu." *Oceania* 88.3 (2018): 305-19.
- Levitus, R. "The Boundaries of Gagudju Association Membership: Anthropology, Law and Public Policy." *Mining and Indigenous Peoples in Australasia*. Eds. J Connell and R Howitt. Sydney: Sydney University Press in association with Oxford University Press Australia, 1991.
- Loizou, J. "Long Discussions in the Bush May Delay Ranger Decision." *Australian Financial Review* 3 October 1978.
- Neale, Timothy. *Wild Articulations: Environmentalism and Indigeneity in Northern Australia*. Hawaii: University of Hawaii Press, 2017.
- O'Brien, Justin. "Canberra Yellowcake: The Politics of Uranium and How Aboriginal Land Rights Failed the Mirrar People." *Journal of Northern Territory History* 14 (2003): 79-91.
- O'Faircheallaigh, C. "Aborigines, Mining Companies and the State in Contemporary Australia: A New Political Economy or 'Business as Usual'?" *Australian Journal of Political Science* 41.1 (2006): 1-22.
- Parsons, David. "Inside the Ranger Negotiations." *Arena Magazine* 51 (1978): 134-43.
- Peterson, Nicolas. "Aboriginal Land Rights in the Northern Territory of Australia." *Politics and History in Band Societies*. Eds. E Leacock and R Lee. Cambridge: Cambridge University Press, 1982. 441-62.
- Plater, Diana. "Cabinet May Use National Interest over Ranger." *Sydney Morning Herald* 16 October 1978.
- Ranger Uranium Environmental Inquiry. *Second Report*. Canberra: Australian Government Printing Service, 1977.
- Richardson, Benjamin J. *Time and Environmental Law: Telling Nature's Time*. Cambridge, United Kingdom: Cambridge University Press, 2017.
- Ritter, David Laurence. *The Native Title Market*. Crawley, W.A: UWA Press, 2009.

Scambary, Benedict. *My Country, Mine Country: Indigenous People, Mining and Development Contestation in Remote Australia*. CAEPR Monograph No. 33, ANU Press, 2013.

Tatz, Colin. *Aborigines & Uranium, and Other Essays*. Richmond, Vic: Heinemann Educational Australia, 1982.

Uranium Task Group. *Submission No 2671: Ranger Uranium – Agreement with the NLC – Options for Early Conclusion – Decision 6908*. National Archives of Australia, NAA A12909 2671. 17 October 1978.

Valverde, Mariana. *Chronotopes of Law: Jurisdiction, Scale and Governance*. London: Routledge, 2015.

Verran, Helen. “On Assemblage: Indigenous Knowledge and Digital Media (2003–2006), and HMS Investigator(1800–1805).” *Journal of Cultural Economy* 2.1-2 (2009): 169-82.

Vincent, Eve, and Timothy Neale. “Unstable Relations: A Critical Appraisal of Indigeneity and Environmentalism in Contemporary Australia.” *The Australian Journal of Anthropology* 28 (2017): 301-23.

von Sturmer, John. “Aborigines in the Uranium Industry: Towards Self-Management in the Alligator River Region?” *Aboriginal Sites, Rights and Resource Development*. Ed. RM Berndt. Perth: University of Western Australia Press, 1982.