

Zero Tolerance or Community Justice?

**The Role of the Aboriginal
Domain in Reducing Family
Violence.**

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- This paper draws heavily on a number of research processes conducted in partnership with Aboriginal people in Western Australia: including several projects on family violence prevention, crisis intervention and healing and (from 2000-2006) a major project on Aboriginal Customary Law. It also draws on work on Aboriginal Night/Community Patrols, community justice mechanisms and justice planning.

- The Queensland Crime and Misconduct Commission is currently holding an Inquiry into Policing in Indigenous Communities.
- In the wake of a death in custody on Palm Island.

Breaking the Chains

The 'chains' we need collectively to break to end family violence were forged in the heat of colonial violence and locked in place by several centuries of oppression, neglect and indifference.

Policing

Policing is still systemically and structurally about *fixing the Aboriginal problem*, rather than *dealing with Aboriginal people's problems*. This has consequences for Aboriginal victims of violence.

Aboriginal law and Aboriginal family violence

- are synonymous in the minds of – mainly white – commentators.
- this position is simplistic and self-serving. It is also classic ‘victim blaming’
- turning the spotlight on aspects of an oppressed people’s culture and identifying them as the source of the problem.

Ideal Victims

- It is a tenant of critical victimology that becoming a 'socially sanctioned victim' requires that those claiming the 'status of victim' fulfil a number of criteria.
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- Aboriginal women have found it hard to achieve 'victim status' because of degrading, racist stereotypes about them and a because of a lack of empathy by enforcement authorities and courts.
- They are not considered to be what Nils Christie called 'ideal victims'.

- In fact Aboriginal women are routinely viewed as 'offenders', and lacking those characteristics western men associate with femininity and therefore deserving of sympathy and chivalry.

Table 1: Indigenous women – rates of incarceration, March Quarter 2004²⁰

State/Territory	Number of Indigenous females in corrections	Rate per 100,000 for Indigenous females	Rate per 100,000 for females	Ratio: Indigenous to non-Indigenous females in corrections
NSW	178	489.4	2 22.1	31.9
Victoria	14	186.1	1 12.0	16.4
Queensland	76	202.7	22.0	12.0
South Australia	16	297.0	14.1	16.0
Western Australia	98	518.5	31.0	28.7
Tasmania	7	np	16.7	np
Northern Territory	12	68.1	1 29.5	4.7
ACT	–	np ²¹	10.5	np
Total	401	303.7	19.5	20.8

Some Aboriginal women are now being accorded victim status in some instances, provided they are helpless, hopeless victims of traditional Aboriginal male violence, sanctioned – even encouraged – by Aboriginal law.

Colonial Strategies

- Some Indigenous commentators see continuities with colonial strategies of dismantling Aboriginal culture,
 - *‘throughout the ‘protection’, ‘assimilation’, ‘integration’ eras of the twentieth century, Aboriginal women have been consciously nominated targets of government in its pursuit to destabilise and dismantle Aboriginal society’, (Dodson P 1991).*

What is Aboriginal Law?

- ‘Law’ represents a grammar for living and an intricate set of religious principles which make the world meaningful and intelligible. Aboriginal customary law cuts across the divisions we impose in western thinking between law, culture and religion.

- Aboriginal law does resemble other forms of law in the sense that it constitutes a body of rules, even if these rules are not written down, which are widely accepted as legitimate by those who uphold them and which are enforced by sanction and penalty

Australian Law Reform Commission

‘A basic precondition for the recognition of Aboriginal customary laws is the simple assertion that it exists as a real force, influencing or controlling the acts and lives of those Aborigines for whom it is ‘part of the substance of daily life’

[Australian Law Reform Commission, 1986,
79

Northern Territory Inquiry 2005

- “Aboriginal customary law is a fact of life for most Aboriginal people in the Northern Territory, not just those in Aboriginal communities. This is because it defines people’s rights and responsibilities, who a person is, and it defines a person’s relationships to everybody else in the world.”

The Western Australian Law Reform Commission (2000-2006)

-widespread support for the recognition of Aboriginal customary law amongst Aboriginal people
- continued non-recognition, and constant attempts to dismantle traditional practices, profoundly disadvantaged Aboriginal people by undermining social structures and systems of authority.
- western systems of justice alone were ineffective in dealing with issues within Aboriginal communities.

Customary Law WA

- For reports and community and prison consultations go to:
www.lrc.justice.wa.gov.au
- Law governs people's lives in urban and rural as well as remote communities

Senior law men and women at Wuggubun

“Traditional law says that justice should be administered by the community.

Traditional law is potentially stronger than European law, in terms of addressing the underlying concerns in offending. Our law has been practised for some time. But it needs reinforcement, and greater respect.”

‘Bullshit law’

One clear message we received through the consultations was that violence against women and children is not culturally sanctioned. Practices such as girls being married off to much older men is virtually unknown today in areas of WA where law is still strong.

Aboriginal women did not want to be saved from their law and culture – they wanted help with alcohol induced violence on their communities and with negotiating the bewildering complexities and ambiguities, the capriciousness and arbitrariness of *the white justice system*

What interested me about the recent Northern Territory revelations of violence was how little space was given to Aboriginal women's voices on the issue.

It was a debate about Aboriginal law by white people.

Family Violence

Unlike the term domestic violence, Aboriginal family violence is difficult to define; its usage within Aboriginal communities remains diverse and localised.

It is not my purpose to reconcile the construct of family violence with domestic violence....there is good reason to retain a degree of distance between the two constructs.

‘If you are being abused in any of the following ways: family fighting, jealousy, physical abuse, emotional blackmail, racial or cultural abuse or have problems caused by too much alcohol, drugs or gambling, this is family violence’ (Kimberley Domestic Violence Resource Directory, 1997).

There is no settled, one-fits-all definition and the meanings associated with the term shift from region to region in the light of local history, circumstances and concerns. They can also shift over time as new issues emerge

At the level of practice, the family violence approach leans towards finding pathways to family healing, rather than new routes into the criminal justice system.

In this crucial respect it transgresses current orthodoxy around domestic violence intervention, focussed on zero tolerance policing and criminal sanctions.

The Nguiu Indigenous Family Violence Offender Program

- The Nguiu Indigenous Family Violence Offender Program offers an example of an initiative that remains Aboriginal community owned while having strong links with relevant agencies and the courts.
- It is holistic, firmly embedded in law and culture, involving men and women, and working through traditional authority structures.

Jayida Burru Abuse and Violence Prevention Forum

The project operates in Derby and the adjacent Mowanjum Aboriginal community, and has evolved to take into account local cultural factors by, for example, having separate young men and young women's spaces and programmes, and working with close support from local elders.

- Aboriginal people not want to their law 'recognised' where this involves writing it down white-fella way.
- It will become the property of lawyers.
- They want their law left alone.
- What they want is support when dealing with the white man's law and in managing the tensions between white law and Aboriginal law

- Partnerships to build 'hybrid' initiatives in the 'liminal' space between Aboriginal and non-Aboriginal domains,
- Which allow Aboriginal values, beliefs and forms of cultural authority to intervene constructively in the shared space between domains.

The price of 'help'

If only Aboriginal people would stop being Aboriginal then we could help them.

Aboriginal people are often penalised for their incapacity/unwillingness to live like us; *our solution to Aboriginal people's 'problems' is still that Aboriginal people cease to be Aboriginal.*

- Many Aboriginal women may not want to leave family, kin, country
- They may not want to become someone else, somewhere else
- They often use refuges for respite not to exit relationships (they use prison that way also).

- We need instead to invest in Aboriginal *community owned* not just in Aboriginal *community based* services.
- There is already a strong nucleus of initiatives: Night Patrols, Safe Houses, Community Justice Groups, Sober-up facilities. They are currently under-resourced and under-valued but they are excellent vehicles for expanding new initiatives.

- These need to be linked with strong initiatives around culture and empower Aboriginal women.
- They need to be linked with the emerging sphere of Aboriginal courts and sentencing courts.
- They need to work in prisons and provide a base for early release and parole

Figure 1

Community Justice Mechanisms

