

*Violence: An Inseparable Part
of Traditional Aboriginal
Culture*

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I want to make the point that violence is not and never was part of Aboriginal tradition ... We have no cultural traditions based on humiliation, degradation, and violation. Let me make this point abundantly clear. Most of the violence, if not all, that Aboriginal communities are experiencing today [is] not part of Aboriginal tradition or culture.

— Mick Dodson, Address to the National Press Club 2003¹

There is little point in criticising traditional Aboriginal Australia, unless traditions pose dangers for today's Aboriginal people, and unless we incorporate this reality into policy responses. Despite recent scholarship that substantiates the pre-contact origins and traditional generators of contemporary Aboriginal violence, the policy implications of this are evaded, even by brave scholars who have undertaken this research. Such resistance operates to deny the necessity of integration, thereby condemning remote Aboriginal people to more years of policy-created suffering. The continuing, dangerous traditional legitimisation and resultant high level of violence is particularly prevalent in remote, more traditionally intact Aboriginal communities. Sadly, in the ongoing climate of self-determination and encouraged cultural renaissance, this situation is likely to continue.

A DISTRESSING RESEARCH AND POLICY CLIMATE

Despite decades of research and interventions, violence among Aboriginal Australians continues to have devastating impacts on Aboriginal people's health, welfare and participation within the general economy and society. This is partly because responses have been distorted by denial of the pre-contact

origins of Aboriginal violence. Considerable evidence from a range of disciplines that pre-contact Aboriginal Australia had high levels of violence, particularly against women, and that traditional norms concerning violence still operate, makes denial untenable. However, policy distortion continues because of a resistance to factors in continuing traditional norms of violence. As with any social malaise, developing effective remedies requires an open approach to research, in the context of respect for individuals and for their basic human rights. The situation of fear of intellectual isolation for those who seek to address causes beyond white colonisation and racism remains a persistent limiting factor on effective policy development. Even among intellectuals who have bravely pointed to pre-contact origins of today's high rate of violence among Aboriginal Australians, the next step of evoking the policy implications of pre-contact causes is resisted. This is distressing research.²

Emphasis on white impact is understandable. Under white colonisation, Australian Aboriginal people have been subject to great loss of life, family, community, land and culture, and a plethora of other human rights abuses and oppressions. Appalling health and welfare statistics are clear indications that Aboriginal suffering still persists. Given this post-contact

suffering, critical assessment of aspects of Aboriginal culture, particularly by white people can rekindle grief and anger. There is also an understandable concern that focusing on aspects of Aboriginal traditional culture that mainstream values would find unacceptable fuels negative stereotypes of Aboriginal people, potentially further hampering their participation in the wider society.³

Indeed, for these reasons, those who write critically about aspects of Aboriginal traditional culture can find it a difficult and troubling experience, one that brings no joy. Further, there are many Aboriginal men and women who are Australia's finest citizens, working hard, often as unsung heroes, for Aboriginal people and shunning violence with more vigour and commitment than most non-Aboriginal people. Surely these Aboriginal people could feel painfully misrepresented when the critical gaze extends beyond white contact.

White injustices against Aboriginal people have been foremost in the public realm for some time. The *Royal Commission into Aboriginal Deaths in Custody*,⁴ the *Bringing Them Home Report*,⁵ the *Apology*,⁶ and SBS's *The First Australians*⁷ are some notable examples. Such processes and events can increase Aboriginal people's sense of being listened to, and that wrongs against them have been acknowledged by a more caring mainstream society. The anthropologist Ron Brunton, while a critic of the romantic vision of traditional Aboriginal Australia, notes 'the increasing celebration of indigenous cultures by the non-Aboriginal intelligentsia. For many of the people involved it has been a transforming experience'.⁸

However there is a downside. Among Aboriginal people, such events can validate an already strong sense of victimhood. Among

white people, they can confirm an already strong sense of guilt. Those with critical perspectives can find it more difficult to speak out.⁹ Questions to be asked, and policies to be pursued, risk continued limitation and distortion within these contexts of Aboriginal victimhood and white guilt. In this charged public environment, to use the words of Brunton, 'challenges to prevailing convictions about Aboriginal history and cultures become moral rather than empirical matters'.¹⁰ He writes that 'violence and sexual abuse against women and children, are also treated with a depressing lack of

candour, although the situation has improved over the past decade'.¹¹ Nevertheless, this research seems largely quarantined from policy development.¹² To secure a less violent, more positive future for Aboriginal people, the present restrictive conditions on enquiry and policy need to end.¹³

One task required to open up this restrictive climate surrounding Aboriginal violence is to 'de-couple' some falsely-linked concepts. In his book *Race and Culture*, African American economist and social commentator Thomas Sowell challenges some orthodox assumptions about redressing racial and ethnic group disparities. For Sowell, there is no denying the horror of racial oppression and hatred:

It is difficult to survey the history of racial or ethnic relations without being appalled by the inhumanity, brutality, and viciousness of it all. There is no more humane or moral wish than the wish that this could all be set right somehow. But there are no more futile or dangerous efforts than attempts to redress the wrongs of history.¹⁴

Sowell identifies the pitfall of equating 'victimhood' with 'virtue', 'by lining up on

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the side of the victim, instead of lining up on the side of a moral principle.¹⁵ He argues that 'morality' and 'causation' are also confused: '(w)hat is most morally revolting, or morally inspiring, about a given situation may not be what is the most important causal factor.'¹⁶ Sowell also writes that 'no group was a *tabula rasa* to begin with'.¹⁷

The particularly high level of violence against women was a feature of pre-contact Aboriginal Australia. First contact explorers and colonists noted with distress the terrible scars and bruises that marked the women due to the frequent brutality of their menfolk. Sutton and Kimm point to Stephen Webb's palaeopathology studies which verify that violence against Aboriginal women was prevalent for thousands of years right across the mainland continent.¹⁸ Webb analysed 'trauma using 6,241 adult post-cranial bone samples and 1,409 cranial samples from prehistoric remains derived from all major regions of Australia except Tasmania'.¹⁹ He found that female cranial injuries, of a kind indicating 'deliberate aggression', were more frequent than male cranial injuries.

In the case of the Murray and east coast, women's cranial injury frequencies exceeded but were less than double those of men, while on the south coast and in the desert they were roughly double those of men. Along the tropical north coast they were just under four times as frequent as those of men.²⁰

Leaving aside single and double cranial lesions, 'triple cranial lesions' caused by weapons of assault were present on 3.8 per cent of females, compared with 'only' 0.7 per cent of males.²¹ Almost one in five East coast females had 'parrying fractures' of the upper limb, 'which indicated defence against an attack from a right-hand person'.²²

The statistics remain shocking. In 2004–05, across four States where records were kept, 'Indigenous females were 44.1 times more

likely to be hospitalised for assault than non-Indigenous females'. Aboriginal women are more likely to be hospitalised for assault than Aboriginal males, with reverse gender ratios than experienced by non-Aboriginal victims.

Indigenous females (18.2 per 1000) were more likely to be hospitalised for assault than Indigenous males (15.9 per 1000), whereas non-Indigenous females (0.4 per 1000) were much less likely to be hospitalised for assault than non-Indigenous males (1.6 per 1000).²³

The Productivity Commission also documents the much higher rate of Indigenous compared with non-Indigenous victims of violence across four categories including homicide recorded by Northern Territory Police for 2005,²⁴

In the NT in 2005, Indigenous people were 26.1 times as likely as non-Indigenous people to be a victim of murder, and 14.2 times as likely to be a victim of domestic violence related assault ... Indigenous females were 8.0 times as likely as non-Indigenous females to be a victim of assault. The rate of domestic violence for indigenous females was nearly 17 times as high as the rate for non-Indigenous females.²⁵

In the case of Aboriginal Australians, the most 'morally revolting factor' might well be the white colonisation of this country. This does not mean: 'therefore it is the key cause of Aboriginal violence'. The presence of horrific violence both before and since white contact points to the possibility that traditional Aboriginal culture is the main cause of the seemingly intractable violence that harms many Aboriginal lives.

Deny the Reality, Delay the Remedy

The insistence that white colonisation together with a romanticisation of the Dreamtime and so-called 'cultural respect' has hindered the nation, including its intellectuals, from reacting

with due distress to the 'normality' of violence within traditional Aboriginal Australia. Even when pre-contact violence is acknowledged, it is seen as part of sacred Law or 'moral order' of an ancient culture, and regulated by traditional sanctions. Both these positions necessitate that to reduce Aboriginal violence, it must be interpreted as mainly a symptom of their loss of culture, their subjugation, their disaffection, their despair.

Programmes shaped by this tenet include self-determined and cultural restoration measures such as land rights and incorporation of customary law into judicial procedures, community empowerment and women's empowerment programmes. It includes responses to male perpetrators based more on healing and less on punishment,²⁶ as in the case of 'circle sentencing', which can include that 'the offender was "to accept the guidance of an Elder" highlighting the way in which sentencing is used to build relationships within the community so that positive pressure can be applied on future conduct of the offender'.²⁷ Night patrols and women's shelters are often essential adjuncts to these programmes.²⁸ As an example, the Aboriginal Family Violence Strategy incorporates some of these principles and 'emphasises that solutions to family violence must':

- Come from within the community.
- Build on customary and contemporary structures and practices.
- Further strengthen the skills and competence of individuals/families, and the capacity of communities to respond to this and other issues.
- Adopt whole-of-community planning and integrate women's and men's voices in decision making.
- Integrate concepts of social, emotional, physical, cultural and spiritual wellbeing.²⁹

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Also included are major interventions and enquiries such as the Northern Territory Emergency Response and the South Australian Mullighan Inquiry that aim to modify Aboriginal destructive behaviours within remote, traditional contexts on the premise (or hope) that effective intervention is compatible with the *in situ* traditional culture. Some of these programmes may be valuable in other ways. For instance, women's empowerment might have broad beneficial impact for women, but may have limited impact as a violence reducer within traditional settings where the women themselves are violent and view violence as a normality.

The loss and suffering experienced by Aboriginal Australians through colonial dispossession is undeniable, and white colonisation was fuelled by an ugly racism that facilitated horrific acts of injustice and violence against them. However, to borrow Joan Kimm's words, the view 'that violence in Aboriginal society is due to cultural devastation and the disintegration of the community has virtually achieved the status of an orthodox pronouncement'.³⁰ Harsh though colonisation has been, it cannot be assumed that the earlier phases of white colonisation increased Aboriginal violence, despite Aboriginal people's suffering and loss during the nineteenth and twentieth centuries. Indeed there is evidence to the contrary. For example, notwithstanding the injustices and oppressions of Aboriginal mission life, Aboriginal violence seems to have reduced under Mission regimens.³¹ Joan Kimm's quotation from the anthropologist Eric Venbrux points to this possibility.

The view that Aboriginal violence is primarily related to anomie resulting from colonisation (including missionisation) and excessive state intervention, however, is problematic in a

number of respects. First, it denies Aboriginal people a commitment to their own deeds and strips them of dignity. Second, it ignores the possibility that Aboriginal people might perceive their acts of violence differently. In many contexts, conflict and fighting generate meaning; despite our moral judgements, these are meaningful activities for Aboriginal people. Finally, the enforcement of state law and the 'pacification' of Aboriginal societies have also been part of the history of colonisation. The ethnographic literature shows that before colonisation Aboriginal societies had high rates of violence and homicide. Might the increase in violence which has been observed not also be related to the disappearance of the so-called Aboriginal reserves as 'total institutions' to borrow Goffman's term, tightly controlled by white government or mission superintendents?³²

Anthropologist David McKnight's account points to this reduction of violence during the mission years on Mornington Island.³³ There are other accounts of reduced Aboriginal violence against each other after white contact.³⁴ The assumption that colonisation necessarily increases violence among indigenous people is understandable: surely such awful subjugation would be the prime cause of high indigenous violence? Levinson's global study of family violence in cross-cultural settings suggests that social change wrought by Westernisation does impact on a people's violence levels, but it can both increase and decrease it, depending on 'the kind and consequences of change'.³⁵ Social change, including family changes when traditional societies undergo a process of Westernisation, 'may lead to less, more, or new forms of family violence'.³⁶

Under mission regimes Aboriginal violence appears to have decreased, compared with pre-

contact prevalence, in more recent decades. Under the 'self-determination' regime, Aboriginal interpersonal violence rose again with a breakdown in the legitimacy of any legal authority, traditional or mainstream, plus welfarism which meant little need for personal endeavour. These factors exacerbate violence-associated, self-destructive behaviours including resistance to education and work, criminal activity, and violence-aggravating substance abuse, and suicide. Cultural adherence to uphold what is still known about Dreamtime Law *plus* the potential for extending contested Dreamtime Law into new and ever-changing settings *plus* self-determination's failed promise of so much better than the previous paternalist regimes has the potential to create a dangerous, compounding scope for despair, conflict, power struggle, and violence.³⁷

Even so, insistent blaming of white colonisation as primary generator of high Aboriginal violence suppresses the uncomfortable fact that, within Aboriginal tradition, violence has strong, traditional legitimacy. Anthropologist Victoria Burbank notes that 'a number of

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anthropologists ... have observed that physical aggression has long been a legitimate (or 'proper'³⁸) form of social action in Aboriginal society.³⁹ The *zeitgeist*⁴⁰ of traditional Law remains a generator of an oppressive array of fears, sorceries, power structures, and violence that are believed in and implemented. Unless it can be modified, Aboriginal cultural continuity (and

cultural renaissance) risks ensuring the perpetuation of 'legitimate' violence. Misplaced blame leads us into hazardous policy-making, in particular, the separatist, relativist, cultural rights policies and all their dangerous enthusiasms for traditional culture. This could foster a continuation of

the Aboriginal fear- and punishment-based traditional moral order into a more confident, perhaps ‘fundamentalist’ form. As Sowell notes in his global analysis on race and culture conflict:

Racial and ethnic identities likewise tend to assume their most ideological form after they are “gone with the wind”.

Exaggerated cultural “identity” is more than a foible. Among its more serious social consequences are (1) putting a dangerous leverage in the hands of extremist fringes within the group, and (2) stifling the cultural advancement of lagging groups by sealing them off from the cultural advantages of the larger society around them.⁴¹

The goal to reduce Aboriginal violence to around mainstream levels will entail further shifts *away* from traditional beliefs, norms, power structures and behaviours. The confronting question is whether successful intervention into Aboriginal violence is compatible with the fostering of distinct and separate Aboriginal culture; or whether successful intervention into Aboriginal violence unavoidably entails programmes that assist Aboriginal people’s entrance into mainstream Australia.

Degrees of Denial

Family violence formed no part of traditional culture ...

Despite overwhelming documentation of observations of traditional violence against women from many sources since first contact, and despite the careful collection, at times painfully almost unwillingly undertaken, of such evidence by contemporary researchers such as Kimm, Nowra, Sutton, McKnight and Webb, there remains considerable denial of its pre-contact existence within recent documents and programmes concerning family violence. Along with Mick Dodson’s statement, here are further recent examples of evasion or denial.

While my ancestors were maintaining a harmonious relationship with each other, nature, the animal world, Europe was just involved and engulfed in huge, massive amounts of violence.⁴²

Family violence and abuse is about lack of respect for Indigenous culture. We need to fight it as indigenous peoples, and rebuild our proud traditions and community structures so that there is no place for fear and intimidation.⁴³

To reinforce that family violence in any form is unacceptable and never has been an accepted part of Indigenous culture.⁴⁴

But in traditional Australia, it was controlled, there were sanctions: it’s worse today ...

We know that in pre-contact Aboriginal Australia, there was a lot of legitimised violence. We also know that violence of an intensity and with morphologies rarely seen in mainstream Australia continues to cripple remote Aboriginal Australia. Nevertheless, there remains a preoccupation to play down the connection and point to differences in the causes of pre-contact and post-contact violence. No doubt, this also distorts policy and intervention.

It is a valid observation that there are differences between pre-contact and post-contact violence. This is inevitable given the history and the influences since colonisation. The present emphasis on playing up differences, however, is so great that it clouds the reality that the present place of violence in remote Aboriginal society has strong traditional legitimisation. The very continuation and resilience of remote communities is based on these Aboriginal people’s preference to live a non-mainstream traditional life, including spiritual life and caring for Country, traditional family and kin structures, and customary law. This is, after all, a key underpinning of self-determination politics. Violence was a key tool in maintaining law and authority in traditional Australia,

including male physical and sexual authority over women. This remains so today. Playing down the traditional origins of today's violence and insistent focus on white contact suffering leads to the dubious conclusion that traditional Aboriginal Australia contains the seeds of its own salvation. A similar hope is present even among commentators who acknowledge the violence of the past, as seen in the following examples.

While rejecting oppressive elements, out of keeping with today's society, we may still find in Aboriginal traditional law answers that will restore acceptable social control to at least some Aboriginal communities. Indeed, scrutinising the firm basis for the healthy functioning of Aboriginal society, we may find answers to some of our own legal and social problems.

There is no doubt that before the settlers arrived, Aboriginal law was not just a cruel, destructive, oppressive and irrational force. It provided a well-organised system and a firm basis for the healthy functioning of Aboriginal society in harmony with its environment.⁴⁵

The denial of equality to women is central to the assaults and sexual abuse that devastate the lives of women and children in the 'homelands'. Women's roles were subordinate to hunting and to the fighting necessary to preserve the tribe, but they had 'gathering' and childbearing roles that were essential to a nomadic band's survival. Demographic imperatives may have led to the marriage of girl-children to older men and polygamy. But if today's violence against women and children had been practised, tribes would have been wiped out. Stone-age demographics, moreover, no longer apply. 'Customary laws' that sanction violent male behaviour, including violent behaviour by 'Big Men', are not compatible with Australian values.⁴⁶

Traditional Aboriginal society expressed anger through aggression but the violence was tightly structured through ritual, ceremony and proscribed procedures. But with the influence of alcohol and acculturation, some of these customs

have become a pathological distortion of those that were the basis of traditional life.⁴⁷

'There was violence against women in Aboriginal culture in the far west of the state before whites came, but it was not a problem that it is now, because it was very controlled, and related to specific laws or behaviours, and violence came about only in the context of breaking one of these laws. For instance, a woman might have her teeth knocked out if she were found guilty of adultery....' *But getting your teeth knocked out sounds pretty violent to me. I wouldn't like that to happen to me at all. What do you think of it?* 'Yes' (she thinks a bit). 'I suppose you are right. I don't know.'⁴⁸

Clinging to the Comfort of our Guilt

Even in the knowledge that Aboriginal people in the family and community sphere experience physical and sexual assault and murder at higher than mainstream levels, interventions are too often reluctant, apologetic, inadequate, and ineffective. Intervening into cultural practice, even violent cultural practice, breaks the 'sacrosanct' tenets of self-determination: we should only help when Aboriginal people ask for help.⁴⁹ Such 'progressive' ideology renders vulnerable, non-integrated Aboriginal people—particularly in distant, remote areas—highly exposed to and defenceless against Aboriginal violence. This result begs the question: why this resilience of orthodoxy if the consequences are so perilous for Aboriginal people?

There are several related reasons for this clinging to orthodoxy, all of them difficult to break through. These include worthy values that support an individual scholar's, policy practitioner's or activist's self-worth and view of the world. To have them challenged can be distressing, disorientating: better to label those who break with orthodoxy as reactionary and racist. Core values here include anti-imperialism, anti-Westernism, and anti-racism: it is wrong that we stole Aboriginal land, it is wrong that Western

culture has almost obliterated this ancient culture, and we must not contribute further to its obliteration by the racist act of denigrating Aboriginal cultural practice.⁵⁰

These worthy values are buttressed by assumptions that are rarely questioned. There is an image of an Aboriginal peaceful, harmonious society shattered forever by the hell of white invasion. The opening lines of the poem *The Dispossessed* by Aboriginal poet Oodgeroo Noonuccal, captures the tendency to idealise traditional times, given the horror of the white invasion:

Peace was yours, Australian man, with
tribal laws you made,
Till white Colonials stole your peace with
rape and murder raid;
They shot and poisoned and enslaved until,
a scattered few,
Only remnant now remain, and the heart
dies in you.⁵¹

Long-lasting viable cultures must necessarily be good and just, particularly those cultures in long-term economic sustainability with the natural environment of a finite planet.⁵² Traditional Aboriginal culture has lived sustainably on this continent for at least 40,000 years. No other existing culture can claim such environmental sustainability and longevity. Surely this fact alone speaks volumes about its high value as a model human society, particularly in today's over-populated, environmentally degraded, conflict-ridden world. Surely our legacy is that this culture deserves to be, must be, preserved and rekindled.

From this perspective, all white people are a part of the Western invasion that has destroyed

a beautiful, unique, primordial civilisation. The guilt can be overwhelming. No matter how much we might be distressed by Aboriginal violence, this guilt can deflect our responses and blunt our will to intervene effectively, even in the face of severely abused Aboriginal babies and children.⁵³ We set up 'escape clauses' that align with orthodox ideas about racism and being white in Australia. These clauses work by making us feel more guilty if we intervene to help Aboriginal victims, than if we turn

our backs on them. Some escape clauses are powerfully effective because they are true, such as 'abuse and violence is rife among the white population too', 'not all Aboriginal men are violent' and, 'the white invasion wrought much suffering onto the Aboriginal people, so they need healing'.⁵⁴ Perhaps most upsetting here is the stereotyping of Aboriginal men as violent. Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma, in his speech delivered at a national forum held in Parliament House Canberra in 2006, put forward as a plea 'don't forget our men and don't stereotype them as abusers':

In the past two months I have addressed men's leadership groups and health professionals, and the concern has been put to me regularly that this debate is demonising Indigenous men and typecasting *all* as violent and abusive and as perpetrators of abuse. Some remote communities have spoken out against this and rejected that they condoned violence.⁵⁵

One risks being accused of racism and thus vulnerable to disabling isolation and dismissal if one appears to threaten the truth of these clauses. It is all too tempting not to upset prevailing doctrine, and the internal call to just give up is there every minute of every day.

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The disabling power of these escape clauses needs to be overcome. Rather than disabling us, perhaps we can tap into the transformative power of our guilt. As fortunate heirs of the dispossession, we should feel motivated to solve the problem, and not to avert our eyes from it. Our guilt can steel us to endure the suffering that comes from this commitment, in the sad knowledge that today's children on the remote communities suffer so much more.

SAME HUMAN FRAILTY, DIFFERENT CULTURES AND POLITICS

A key upsetting aspect about Western peoples' critical assessment and intervention into Aboriginal violence is that it seems to ring hollow. Who gives Westerners the moral high ground given their history of imperialism and violence? Certainly, all peoples have great capacity for violence. For almost all of our histories, Western and Aboriginal peoples probably had much in common regarding the central role of violence as a means of control over others. An essential difference is that in recent years, the West has developed effective systems to mitigate the public and private violence of its citizens. An overview of this divergence between Western culture and Aboriginal culture regarding the legitimacy of violence is presented here. This has two main purposes.

First, it is to emphasise that people are very malleable regarding their attitude and capacity to tolerate violence. It is culture and its associated belief systems, power structures and norms that largely determine people's tolerance and attitudes concerning violence. The key difference between the West and traditional Aboriginal culture here is that, only very recently, Western culture developed effective

philosophies and associated political and legal systems that could effectively reduce violence.

Second, some illustrations of traditional Aboriginal violence are presented here. While others have done this before,⁵⁶ given the continuing public denials and policy evasions, there is a need to redraw attention to how violence permeates many aspects of Aboriginal traditional life, including the spiritual, judicial, and clan, kin and gender relations. Violence was and too often remains, an 'essential' mechanism 'to set things right'. Unless this is understood as a key feature of the violence that we so much want to address, we will remain unable to grasp the reality that effective responses to Aboriginal violence entail a process of integration, and solutions will remain elusive.

The Violence of the West: from Commandment to Enlightenment

Western society's legal systems and social norms once condoned violence between individuals in a range of circumstances, particularly within the private realm of the family. However through much hard work and struggle, violent behaviour is now illegal and individuals have the right to be free from violence.

Western civilisation is littered over the centuries with violence, and thousands of scholars have studied the West's violent history. Civil wars, wars between nations competing over trade and territory, ideological and genocidal wars such as the Holocaust, centuries-old wars fuelled by religion, revenge and payback such as Bosnia-Herzegovina and Northern Ireland, the slaughter of thousands of women accused of witchcraft during the 16th to 18th centuries, violent land grabs of Aboriginal territories, the cruelty of slavery and harsh workers' lives

Within traditional Aboriginal culture, there was considerable legitimate scope for people to use violence

in 19th century mines and factories, and the violent treatment of convicts including of children committing petty crime. The domestic sphere of the West is littered with violence too. Indeed in Britain and Australia, it was not until 'well into this (the twentieth) century that a man's legal right to beat his wife was finally put to rest'.⁵⁷ In Australia, marriage gave a man legal immunity against a charge of rape of his wife, and '[i]n several Australian states legislation has emerged on this matter only since the 1970s', finally ending this injustice.⁵⁸ The Old Testament God's commandments, a quintessential pre-enlightenment touchstone of morality and law for the West, bestowed great scope for harsh and violent punishment, commanding death for adulterers, sorceresses, and for those who mock their parents. Christian-derived gender inequity continues to permeate Western culture, with marriage promises by the bride to 'obey' her husband still far from a rarity.

Across the centuries, this same Western civilisation gave rise to rational sciences and philosophies that challenged unjust and irrational norms and violent practice. Building on the development of personal rights in medieval and English common law, liberal-democratic, Enlightenment ideas such as equality, human rights, and a judicial system founded on reason rather than sorcery emerged. These ideas permeated so that eventually, oppressed groups within the West saw the key to their equality and liberation within the values of their own society. Worker's fair pay and conditions, the abolition of slavery, voting rights for women, and belatedly, the rights of women to be free from domestic violence and the State's obligation to uphold that right, are generated and upheld within this liberal-democratic, Enlightenment setting. Indeed, the very moral spirit or *zeitgeist* of Western liberal democracy seems to be a consistent increase in awareness of hitherto acceptable injustices and a quick shift to their 'unacceptable' status. Prejudicial language and attitudes regarding gay people, people with

disability, and people of different racial groups and cultures are rapidly undergoing this transformation now. Even the last twenty years have seen almost revolutionary improvements. This is a core aspect of liberal-democracies: often challenged, not universally held, but nevertheless a quintessential marker of the open liberal-democratic polity.⁵⁹

Within Enlightenment, liberal-democratic thought, the main entity for the receipt of rights is the individual, and the main embodiment and protector of individuals' rights is the democratic, secular State. Within this structure, the ability of other entities including family, clan, community, church, and gender, to have command over individuals is significantly reduced. Certainly, some entities continue to seek with violence control over others, but the State, through the enforcement of State law, is obliged to prevent violence and protect individuals from such violence. This may entail the State's law enforcement agencies to use violence in limited circumstances, to uphold public safety. Problems for the State do occur when its Law enforcing agents—the police and the defence forces—step outside the Law by applying violence inappropriately or too harshly, but in democracies this is usually subject to the judicial process and reined in. Hence, in terms of power and rights, there are two primary entities within Western liberal democratic societies: the State and the individual. This is mediated by a social contract whereby an individual enjoys social freedom, unless what they do with that freedom impinges on the rights of other individuals to freedom and safety. Then the State intervenes to rein in the perpetrator, and to protect the violated.

Within this setting, individuals still have allegiances to social groups, so that even within liberal-democratic states conflict frequently arises within and between social groups such as family, religious bodies, and ethnicities. Indeed, this conflict can be violent: domestic violence and drunken brawls for instance

remain all too commonplace. But by and large, there is an effective *zeitgeist* that violence is wrong, and that physical violence oversteps the social contract and invokes legitimate intervention by the liberal-democratic State. Also within this liberal-democratic secular setting, family, clan, religious and other allegiances and conflicts, and a plethora of older, non-liberal and non-rational beliefs continue. But again, the new *zeitgeist* is effective with an adequate acceptance of the social contract, enabling liberal-democratic State power and individual rights to prevail. By and large, the Old Testament-condoned harsh punishments and inequities are of the past, not the present.⁶⁰

Above all, within liberal democracies, the use of violence is forbidden. For private citizens there is no legitimised violence apart from self-defence.⁶¹

This contrasts with what the anthropologist Basil Sansom calls “‘righteous’ or “‘moral’ violence’ available to men in traditional Aboriginal society to punish women ‘who have offended men’s sensibilities’”. Kimm found Aboriginal men’s claims of ‘righteous violence’ in many court cases where the men severely assaulted and murdered women for their ‘provocative’ misbehaviour and disobedience. Such punishment continues to have legitimacy within communities. In the words of a Northern Territory Aboriginal woman, herself a victim of domestic violence, ‘this customary violence was inflicted if ‘women or a wife was actually being lazy, not feeding the kids or running off with another man, things like that. People would then agree “Oh she needs that beating”’.⁶²

‘Righteous’ or legitimised violence against Aboriginal men continues as well. This too receives community endorsement, even from among urban-dwelling Aboriginal women. This is evident in the following ‘Viewtown’ Aboriginal woman’s lament about a young man’s avoidance of ‘Sandytown’.

He’s done something ‘wrong way’ to the family, and he’s got it coming to him from his people in Sandytown. So he’s not going to Sandytown, he’s avoiding the place, because he knows that when he goes there, he faces a beating from his family there. But that’s not right. He should go to Sandytown, because he must take what is due to him. That’s only right.

Some of the women nodded in agreement, while others listened quietly.⁶³

Aboriginal Traditional Law and the Legitimacy of Violence

Within traditional Aboriginal culture, there was considerable legitimate scope for people to use violence. Responsibility to uphold Law was dispersed throughout clan and family, with its enforcement residing primarily, but not only, with older initiated men, the tribal elders. Indeed ‘Ronald Berndt remarks that a man not uncommonly “take(s) the law into his own hands” and this is regarded as “legitimate” behaviour’.⁶⁴ Both men and women could legally use violence, and both had rights and obligations to use violence to address wrongs. While acts of violence could contravene traditional law, violence was widely available as a legitimate means to address wrongs within the sacred and everyday realm.

Dreamtime Law functioned above all else to protect ‘Country’, by keeping the interconnected moral order in place.⁶⁵ To protect Country against sacrilege and to uphold the social order, enforcement of correct ceremonial procedures and obligations took precedence, and this included harsh violent punishment, sometimes death. Violence as a means to set things right extended beyond the sacred, rendering family and kinship conflict a dangerous realm too.⁶⁶ Indeed, the sacred and the non-sacred realm were not clearly defined, with creation myths or ‘parables’ of Dreamtime ancestors experiencing similar hazards of family and kin life, and undergoing the same violent punishment when kin and

gender rules were broken as experienced by those in the realm of the living.⁶⁷

In this traditional *zeitgeist*, there was no ‘individual right’ to counter this. Aboriginal traditional law was resilient but it was also harsh, unforgiving and at times deadly for individuals. In this setting, a developed idea of an individual’s right to be free from violence was not a priority, if it existed at all.⁶⁸

This reality runs counter to another myth regarding Aboriginal traditional culture: that a culture in harmony with the natural environment and with an impressive longevity means it must be good for all individual members. Anthropologist Robert Edgerton in his book *Sick Societies: The Myth of Primitive Harmony* argues that the idea that traditional cultures are ‘more harmonious and better adapted than larger more urbanised societies’ has within ‘Western⁶⁹ thought ... taken on the quality of a myth, a sacred story not to be challenged’.⁷⁰ There are two core truths that run counter to this fallacy. First, long-lasting cultures living sustainably with their environment can have traditional beliefs and practices that cause human suffering. Second, traditional beliefs and practices that cause human suffering often have no role in that sustainability (although the culture may believe that they do play such a role, and such belief can be a major legitimisation of harmful practices). Indeed, traditional beliefs can hold people hostage to suffering the implications of a harsh environment, such as famine and harsh population control measures, by preventing innovations that would enable a better life.⁷¹

Edgerton writes that, in all societies, including resilient traditional societies, ‘human beliefs and practices may persist even though they serve individual or social needs rather badly’⁷²;

that harmful practices such as deadly feuding and ill-treatment of women can co-exist with long-term group survival; and that traditional practices can serve some members better than others, frequently men better than women, and adults better than children. Indeed ‘[t]he presence of inequality creates the potential for the establishment of traditional beliefs and practices that serve the needs of some people at the expense of others’.⁷³ Edgerton presents evidence from across the globe, including from traditional Australia,⁷⁴ of ‘the frequent occurrence of seriously harmful beliefs and practices’⁷⁵ among small traditional societies: beliefs and practices that lead to high levels of ill-health, hunger, conflict and homicide. In the control of homicide, modern urban societies are typically better than traditional societies.⁷⁶

THE CENTRALITY OF VIOLENCE ACROSS CATEGORIES OF TRADITIONAL LAW

Within Australian traditional Aboriginal societies, physical punishment was a central tool to restore order when the natural and social cosmology was considered disturbed by human action, whether that action was intentional or otherwise. While ‘the Dreamtime provides the source of acceptable codes of behaviour in all aspects of life’,⁷⁷ and ‘Aboriginal customary law does not distinguish between standards of social behaviour, sacred matters and binding rules: they are all “the law”’, traditional law made some

distinction between public wrongs, which included ‘breaches of sacred law, incest, sacrilege or murder by magic’, and private wrongs which included ‘homicide, wounding and adultery’:⁷⁸

The essential difference lies in the manner by which the dispute was resolved. For public

Even accidental sacrilegious acts could be subject to the death penalty

wrongs, Elders are actively involved; whereas for private wrongs, the person who has been harmed (and their relevant kin) generally determines the appropriate response.⁷⁹

Within both the public and private realm of traditional law, individual rights were, by Western standards, put at risk and violated. Use of sacred objects and rituals to induce fear of sacred or magic consequences, harsh physical punishment, and public shame or ridicule is claimed to have resulted in a high degree of compliance with the law in traditional society.⁸⁰ Nevertheless, violence so permeated traditional life as part of sacred ceremony and punishment for sacrilege as well as a means of interpersonal control and punishment, that it appears to have been an accepted and expected facet of both sacred and everyday life.

The 'Necessity' of Violent Punishment for Dreamtime Sacrilege⁸¹

Clearly, most of the present clamour for the restoration of "tribal law" comes from persons who have no idea of its major provisions.⁸²

Within the sacred realm of Aboriginal tradition, many details of Dreamtime myths, ceremonies, and sacred Law of Aboriginal Australia have been lost or no longer actively practised since colonisation. Even the more traditionally intact communities have lost significant amounts of sacred traditions and, where it remains strong, the present context for its practice has greatly altered. Nevertheless, Aboriginal culture and beliefs display resilience, Aboriginal tradition has had little more than 200 years of colonial interception, and where practice is no longer extant, calls for a restoration of tribal law and the right to practise Aboriginal culture can reach into living memory. This traditional resilience and the persistent calls to establish Aboriginal law as a recognised subset within Australian law, mean that traditional beliefs and practices have implications for the well-being and rights of present-day Aboriginal people.

For the sake of Aboriginal people's individual rights, particularly in remote communities, possible implications require our attention, including awareness of Dreamtime sacred law's harsh demands.

Sacred life was the core, encompassing feature of Aboriginal society, and it was believed that all life depended on correct sacred ceremony. In his account of the Central Australian Aranda people, T.G.H. Strehlow writes:

... the religious acts performed by the totemic clan members of all the inland tribes at their respective totemic centres were regarded as being essential for the continuation of all human, animal and plant life in Central Australia.⁸³

There was interdependence here, with totemic clan groups being responsible for a distinct totem. For example, rain for the countryside of the Eastern Aranda Purula-Kamara local group depended on the rain ceremony of the *Ujitja*, the totemic clan responsible for making rain.⁸⁴

Ceremonial mistakes and violations were very frightening events for traditional Aboriginal people, because such mistakes upset, and risked triggering the wrath of, the powerful ancestral creation beings, threatening the Country on which life depended. In such a context, causation rather than intention was the primary consideration, and members of the tribe, particularly male Elders, had the right and obligation to carry out punishment against the wrongdoers. To redress such a fearful rift, severe punishment against those wittingly or accidentally committing sacrilegious acts was regarded as essential.⁸⁵ Under customary law, 'if someone accidentally witnessed a prohibited ceremony or happened upon a sacred site, that person would be liable to punishment, regardless of motive or intention'.⁸⁶ K. Strehlow writes that

it would be no exaggeration to say that the system worked as one of sheer terror in the days be-

fore the white man came. This terror was instilled from earliest childhood and continued unabated through life until the extremity of old age seemed to guarantee some immunity from the attentions of blood avenger or scorcer [sic] alike for wrongs real or imaginary ... children were not exempted from capital punishment for persistent offences against the old tribal code.⁸⁷

Capital punishment was the consequence for various forms of sacrilege. These included wrongful inclusion or witnessing of ceremony based on one's status and gender, such as ceremonies 'from whose performances women and children and unauthorised males were excluded on pain of death'.⁸⁸ Sacrilege occurred when ceremony was not performed correctly on pain of severe punishment including death. Violation of sacred objects, either through seeing them when one's status or gender disallowed it, stealing them, or damaging them even accidentally, entailed punishment by death. Violation of sacred sites, including entering them when one's status or gender forbade entry, also entailed punishment by death.

Features of sacred law are incompatible with Australia's 'individual rights' framework. Some events recorded by anthropologist T.G.H. Strehlow that illustrate key incompatible features are outlined here. Strehlow spent many years observing and documenting the central Australian *Arente* people's sacred life and law, including the terror and gravity with which sacred transgressions were regarded and subsequently dealt with.

First, a sacred crime may carry a death penalty including when that crime has no direct human, animal or property victims except in the realm of Dreamtime belief, such as the wrongful witnessing or incorrect performing of a sacred ceremony, wrongful seeing of a sacred object, or wrongful presence at a sacred site.

Second, the death penalty may be used for stealing a sacred object. In an account told in

1953 by two elderly men at Hermannsburg decades after it occurred 'sometime before 1877', an uninitiated boy was caught 'thieving portions of *tjauerilja*⁸⁹ meat near Manama'. For this, plus the fact that he was a 'hardened offender', he was drowned. Other relatives of the drowned boy later killed his mother as 'she should have kept closer watch over the boy so that he could not have thieved any *tjauerilja*'.⁹⁰

Third, causation rather than intention is central, meaning that even accidental sacrilegious acts could be subject to the death penalty. Among the Aranda, accidental dropping and breaking of sacred *tjurunga* resulted in a death sentence

'... when the sacred *tjurunga* were taken out of their caves or down from their storehouse tree platforms, the young men detailed for this task had to exercise extreme care: any unfortunate culprit who accidentally dropped and broke a stone *tjurunga* was later speared to death at the behest of the elders entrusted with the care of the sacred objects. Thus a Western Aranda youth, who was the son of an Ellery Creek man called Kutakuta, was speared to death some months after he had dropped a stone *tjurunga* belonging to Lurknalurkna, a euro totem elder of Indata, while bringing it down from a high mountain cave.⁹¹

In another example, during the 1850s or 1860s an accidental act of grave sacrilege occurred. During the weeks-long eagle commemorative ceremonies 'men were gathered together from most eagle totemic centres situated in the Lower Southern Aranda area'.⁹² Women and children were allowed near the festival camping ground only at night, and each morning while still dark they had to leave to gather food some miles away 'until well after sunset'. Their morning signal to leave 'was given out by a young man who climbed up the (eagle totem) pole in order to rattle the sea-shells suspended near its top'. One morning, an accident occurred during this process:

This accident was deemed to constitute a grave act of sacrilege against the grim eagle ancestors. There were cries of alarm from the watching men and shouts of murderous anger from the ceremonial chief and his elders. The young men involved in the accident—there were either two or three of them—were immediately seized. Their necks were twisted around till the vertebrae had been dislocated, and they were probably choked to death as well. Holes were dug at the foot of the eagle totem pole, as a token that it was this symbol itself which had executed the offenders against its sacred dignity ... [T]he shock that ran through the assembled gathering which had witnessed the murderous grimness of religious power exercised so ruthlessly was so severe that no eagle *wariera* festivals were ever held again either at Uralawuraka or at Akar Intjota.⁹³

Fourth, while acts of sacrilege are in general clearly defined and subject to predictable, expected and obligatory punishments, deadly extension of sacred punishment took place. Some accounts point to hazardous indistinct boundaries between sacred and non-sacred misdemeanours. This provided scope for violent law-making which crossed into the private, discretionary realm which required no precedent.⁹⁴ The following example suggests this: “Executions of younger males, especially of those who were considered disrespectful to the authority of their own elders, on charges of sacrilege were ... a feature of the accepted penal system of all ... tribes in the Centre”.⁹⁵

Sacred punishment could spiral out of control when disagreement occurred over whether a sacrilegious act took place because of differing interpretations of a mishap: thus the validity of the murderous punishment was disputed. T.G.H. Strehlow noted a case where relatives objected to the execution of four young men because a sacred object they were guarding was damaged due to a bushfire:

These relatives accordingly proceeded to avenge their dead kinsmen by killing some of the young

men who had carried out the instructions of their elders. In this way a lengthy vendetta was started, and a number of men lost their lives because of a tragic accident.⁹⁶

Fifth, the identity of a guilty party could be determined through sorcerous or magical means. The divination ritual, also associated with deadly vendettas,

took place in order to divine by—to us—exceedingly haphazard means the alleged identity of murderers (by proxy or by sorcery [sic]) which natives once believed provided conclusive proof necessary for the sending out of revenge expeditions.⁹⁷

In one instance from Ellery Creek described by T.G.H. Strehlow, relatives make a spindle from a murdered man’s hair, and watch for when it breaks while it spins into a hair string. The distance and the direction of the spindle’s travel indicate the murderer:

If it does not travel far, the [men present] know: ‘one of the men from his own camp killed him’. If it travels a considerable distance, [they know]: ‘The murderer came from a distant place; and that too is the direction from which the murderer came’.⁹⁸

Sixth, sacred Law discriminated on the basis of gender, with more prohibitions placed on women. Much has been written and debated regarding the comparative roles and rights of Aboriginal women in the sacred realm. Certainly, men faced restrictions on pain of death to many sacred places, objects and ceremonies, with only ceremonial chiefs and male elders allowed access to the most sacred. However women’s access was much more limited, often akin to those of young, uninitiated males and children. K. Strehlow cites numerous examples.⁹⁹ For a woman, there were more sacred objects that she could not see or touch, more sacred sites that she could not be in or near, and more sacred ceremonies that she should not participate in

or witness, even accidentally, on pain of death. Surely most nerve-wracking, this could affect essential daily tasks such as water collection:

Even waters open to women and children, if they were at or near a sacred site, had to be approached carefully; generally too, they had to be vacated before the rocky bottom could be seen. Thus in the Krantji area, where the dearth of other safe waters in the district made it necessary that the women be allowed to drink from the soak itself, they were permitted merely to skim the water off close to the surface: only men could plunge the vessel down to any depth.¹⁰⁰

Storage places of sacred *tjurunga* were forbidden to all but 'the ceremonial chief and the local group elders' and other local men were allowed 'only if sent there on special errands by the ceremonial chief and his elders. Women and children were excluded at all times'.¹⁰¹

[w]ithin living memory, a thirsty Eastern Aranda woman, when walking to the Ujitja spring to fill her kangaroo-skin waterbag, cut a corner in the mile-long mountain gully on her way, and passed within sight of the trees on which the Ujitja rain *tjurunga* were stored. Her tracks were discovered soon afterward, and she was killed by a spear thrust through the side of her chest.¹⁰²

W. Lloyd Warner also detailed several examples of east Arnhemland's Murnjin men and women being killed for willing or accidental totemic and ceremonial transgressions, noting that '[i]f women look at a totemic emblem they are killed by their own group'. Even husbands were expected not to save their 'guilty' wife, although there were brave husbands who did:

Munyiryir's wife was burning a patch of brush while hunting for bandicoot. The husband had hidden the string for his totemic emblem in the bushes. The fire destroyed it. The string belonged to the Daiuror clan. They tried to kill her and would have succeeded, but she escaped

to the mission with the help of her husband. He was felt to have done wrong in helping her.¹⁰³

One wonders what chance of escape with no mission to escape to, and whether endeavours to escape tribal punishment increased with the missions. Indications are that they did. With colonisation came safe places for some Aboriginal women. McKnight reports that on Mornington Island, women gained protection from domestic violence from the mission superintendent.¹⁰⁴ There are reports of early White homesteads in the Pilbara providing a refuge for Aboriginal women escaping traditional domestic violence.¹⁰⁵ Also, Daisy Bates relates how White man's law was by the early 1900s or 1910s preventing revenge murders for broken betrothal promises, an apparently commonplace traditional murder in the Gascoyne region of Western Australia.¹⁰⁶

For Those that Believe: The Debilitating Terror of Sorcery

While sorcery is a broad term, R.M. and C.H. Berndt write that when used in reference to Aboriginal Australia, it usually refers to 'destructive magic'.¹⁰⁷ Anthropologist Victoria Burbank calls it 'supernatural aggression'.¹⁰⁸ Sorcery is a powerful form of violence. It does not depend on direct, physical force. Rather, it exploits deep beliefs to control, punish, or do others harm. It is a form of mental or spiritual abuse often with intended consequences of physical harm. From a Western-based system of thought and practice, sorcery seems the antithesis of rationality and civil society. But belief alone can render sorcery very real, an effective, even deadly, danger to believers. Within Aboriginal traditional society, sorcery's victims could be controlled, made physically or mentally ill, or even die. With a few strategically arranged and placed objects, a few certain words, and a few ritual actions, men and women¹⁰⁹ could exercise sorcery against another with profound effect. What a powerful weapon for an aggressor, what a deadly force against a victim!

Many forms of sorcery across traditional Aboriginal Australia have been documented.¹¹⁰ It included effigies, gruesome rituals, chants, 'magic powder', and 'magical operations'.¹¹¹ The pointing bone is probably the most well known, and was 'widely distributed over the Continent'.¹¹² Sorcery was performed by sorcerers, experts in the rituals, primarily used against Law breakers. It was also used by men and women to control or punish another. For instance,

in Western Arnhemland, sorcery figures are drawn on the walls of rock shelters, as well as on sheets of prepared bark. A jealous husband, not necessarily an acknowledged sorcerer, may try to punish an unfaithful wife by drawing her likeness, with an eaglehawk or Rainbow Snake head, several arms, and stingray nails protruding from her body. The conventional sequence is that she becomes ill, as the painting is retouched she becomes worse, and she finally dies. Or the figure may represent the woman's lover, or a woman who has rejected a man's attentions. In actual practice, people say, there is no need to do more: the threat of drawing a woman may be enough in itself.¹¹³

Victims' belief in its power is what made the sorcery efficacious, and '(a) person who claims to have performed magic or sorcery on another is likely to make sure that this information gets around to his intended victim'.¹¹⁴

Further to this, traditional Aboriginal Australia saw death as unnatural, except death of the very old.¹¹⁵ Hence, deaths that would, from a Western perspective, have an obvious cause including infection or even accident or misadventure such as a shark attack, would be seen as unnatural: '(s)omeone, therefore, must have been responsible'.¹¹⁶ The source of such convictions is the belief in the supremacy of the supernatural. As Kaberry observed,

when an able-bodied adolescent or adult dies, the normal course of life has been subjected to interference, and the reason is sought in the abnormal or supernatural sphere ... death itself

is due to the malevolent agency of the sorcerer who has misused powers from *Kaleru* and the *djuari*, and has directed them against individuals who have no defence at the time. This in turn entails a whole system of activities devoted to the discovery of the sorcerer.¹¹⁷

The explorer and magistrate Edward John Eyre made a similar note concerning Aboriginal people of southern Australia, observed during the 1840s,

... as the natives do not often admit that the young or the strong can die from natural causes, they ascribe the event to the agency of sorcery, employed by individuals of neighbouring tribes. This must of course be expiated in some way when they meet ...¹¹⁸

Kaberry writes that divination and sorcery were central tools for identifying and killing the sorcerer.

The *baramambin*, who has himself obtained his craft from the rainbow snake and the *djuari*, will look at the stones that have been touched by the juices fallen from the platform on which the corpse has been placed. From these he may be able to indicate the direction from which the sorcery has come. If the guilt is established definitely, the relatives will seek to kill the murderer. If it is inconclusive, the elder relatives and *barambin* will go apart secretly about a year later, take a bone or the skull, paint it with red ochre and blood from their forearm, bury it in an ant-bed with a fire, and chant a particular spell. It is believed that the murderer will sicken and die.¹¹⁹

But sorcerous means of identifying and killing wrongdoers did not necessarily 'settle accounts', and difficult-to-settle feuds could result.¹²⁰

David McKnight's account of sorcery among the people of Mornington Island is invaluable in its insight and analysis of historical trends. McKnight lists about 240 sorcery cases

covering pre-1914, during the missionary times of 1914–78, plus after the missionary times from 1978, when a ‘shire was founded’.¹²¹ McKnight records that sorcery rates increased for a while when the missionary regime began its retreat in the mid-1970s, ‘when the pace and degree of change and more social disruption occurred’. He also writes that ‘from my records there was conflict, violence, and sorcery among the Wellesley Islanders before the presence of European Australians, so these phenomena cannot per se be attributed to the advent of Europeans’.¹²² McKnight locates belief in sorcery at the heart of Dreamtime belief, myth and Law. There are several myths among the Mornington Islanders to account for the origins of sorcery. One of these is the myth of Thuwathu, the Rainbow Serpent.

Sorcery is one aspect of a totemic mythological world view ... the Rainbow Serpent is both a sorcerer and a medical doctor. He is a Law enforcer and he ensures that those who break the Law should suffer as he did. He can be called upon by Law men to help them to enforce the Law and hence when a Law man uses sorcery for this reason he is justified in doing so.¹²³

Sorcery: Some Recent Trends

While sorcery is still practised today, some reports suggest greater discontinuity with the past than that of violence. McKnight reports that on Mornington Island there was a sudden, albeit brief, escalation of sorcery cases under contemporary pressures. Nevertheless the intent regarding the use of sorcery remained clearly traditional.¹²⁴

The disrupting presence of European Australians undoubtedly caused conflict that led to violence, which in turn gave rise to suspicions of sorcery when misfortune and unexpected deaths occurred. This was certainly true in 1975 when the pace and degree of change suddenly increased and more social disruption occurred. Sorcery suspicions and accusations became rampant ... Also pertinent is that on Mornington Island, as

elsewhere in Australia, the elders and Law men were frequently denied the right to use physical coercion by missionaries, government officials, and police, in fact by the whole legal apparatus of European Australia. The penalty for spearing or killing a wrongdoer was too harsh for the avengers or Aboriginal Law enforcers because they were apt to languish in jail for years. Hence, they turned more and more to sorcery.¹²⁵

By the 1980s and 1990s, sorcery subsided again. The old sorcerers were dying out, and Mornington Island’s young people no longer believed in sorcery’s efficacy, having adopted more of the White way of interpreting the causes of sickness and death via the mission regime and their white contact through cattle station work.¹²⁶

Burbank also conveys a discontinuity regarding contemporary sorcery’s link with the past among the people of Mangrove. According to Burbank, the phenomenon of ‘cursing’ started in 1971 as a ‘settlement life’ phenomenon. However, the curses evoke strongly traditional references, and are used more often by men against women.

The act of cursing appears simple. I am told that an aggressor simply says that a woman is cursed to a ceremony or to a certain sacred area in a country. By this act, the woman is removed from the world of the ordinary. She becomes sacred and by association “dangerous”, as might everything that she might touch ... much like a person quarantine. She is in danger of impending death, and almost anyone who might touch her is similarly threatened. Not only women are targets; objects like buildings and vehicles, animals, and places may also be cursed. Something can be “put in the way of” a dead person, a ceremony, or the sacred area of a country. The presence of the dead or sacred has been called to the person, animal, object, or place and must be treated accordingly.¹²⁷

Burbank wrote that some Mangrove women appear to have little fear and perhaps no longer

believe in pre-contact ideologies such as ‘devil-devils’ and ‘murderers’, and ‘supernatural aggression’, due to thirty years of White teachings, both Christian and non-Christian. What was so surprising for Burbank was that so many still believed in them.¹²⁸

While McKnight points to sorcery’s decline due to Western influence over the years and the dying out of the old sorcerers, Helen Hughes has identified an opposite trend. She argues that the failure to provide people on homelands with a strong mainstream education allows a continuation of sorcerous beliefs in these communities.

Because education has failed to introduce rules of reasoning and causal sequences, fears of malevolent spirits and sorcerers are used to strengthen the position of ‘Big Men’.¹²⁹

Roger Cribb, who worked as an archaeologist in Cape York Peninsula for 20 years and developed close ties with the Wik people, wrote in 2005 that

[b]elief in magical influences in Cape York Peninsula have not lessened with increasing European contact. ‘Pourri pourri’ is often evoked to explain physical and mental states which to clinical workers could easily be explained in other ways. Pourri pourri is frequently blamed when deaths or physical illnesses occur. This extends to mental conditions such as depression or psychosis. The fear of being accused of pourri pourri may also cause great distress and anxiety.¹³⁰

In Central Australia, sorcerous beliefs are being used against young girls to terrorise them into having sex. The Mullighan Report of 2008 documents the following case of a girl in a dangerously violent relationship with an older man.

Police records show that aged 13, the girl was bashed so severely that she was admitted to hospital. This bashing breached a restraining order.

Following one assault, welfare noted that ‘[the girl] expresses concern about her partner telling her that the evil spirits will cause her harm if she does not sleep with him’.¹³¹

The resilience and controlling power of sorcerous beliefs and their continuing, debilitating impact on remote communities needs to be acknowledged. It seems that any tilt towards prioritising traditional cultural learning and away from mainstream learning can place young Aboriginal people in serious peril, rendering them more subject to oppressive traditional beliefs and power, while also ill-equipping them to live in the mainstream world. These are core dangers of the self-determination and cultural renaissance precepts which are yet to face adequate challenge.

Shifting Punishment to Perpetrators’ Kin and Female Scapegoats

An aspect of Aboriginal traditional punishment that by Western measures is distressing and unethical concerns ‘communal guilt’, where the kin of an accused wrongdoer receives punishment: ‘[i]f the culprit cannot be found his kin can be punished instead.’¹³² This can drive drawn-out payback vendettas. It also includes being somehow associated with the unlawful or tragic event itself, even though clearly innocent by Western, rational standards. As Kimm writes, both forms are ‘alien to Anglo-Australian law’.¹³³ It is indeed alien to the whole Western moral perspective which holds that guilt resides with individuals and their intentions.

One example of punishment of wrong-doer’s kin is seen in brother-sister avoidance as described by Cowlshaw, where a ‘brother’ could not find his spears in time to catch and punish the actual sister who ‘broke’ the avoidance taboo, so he threatened his other ‘sisters’ instead.¹³⁴ Moreover, a woman has to bear the responsibility (and punishment) for brother/sister avoidance etiquette, even if she is the totally innocent party.

Women seem to be much more vulnerable to misdirected punishments. Drawing upon the work of Burbank and Langton, Kimm notes that

Women are likely to be the victims of displaced aggression for men's convenience. That is, the target shifts from a male culprit to a female scapegoat. The threat of aggression can limit women's autonomy in any general aspect of behaviour.¹³⁵

Warfare in Pre-contact Times: The Slaying of Young Men

One of the present-day phenomena of concern is the co-location of Aboriginal people from different tribal lands and tribal groups, because of the conflict that this generates. Wadeye is perhaps most noteworthy, but there are instances across Australia of this problem. In traditional Aboriginal societies, inter-clan conflict and warfare was an integral part of spiritual and social life, with significant impacts in some regions on the age and gender demographics of Aboriginal tribes. These conflicts were reported by early colonial officials, explorers, and anthropologists. Two examples are chosen, and to convey the similarity across time and place, one is from the north as described by W. Lloyd Warner, an anthropologist working among the Murngin of east Arnhemland in the 1920s, the other from southern Australia as described by Eyre in the 1840s. These accounts evoke great sadness in the 'utility' of injury and death of warrior men and in the poignant hesitation to injure being met with the victim's call '*spear (me)!*' Also in both can be seen an enmeshment of inter-clan and inter-tribal conflict and war into traditional life as 'necessary', expected, almost seasonal events, as they correct for inter-clan or inter-tribal social and spiritual transgressions that 'inevitably must have occurred' over intervening weeks or months.

Inter-clan and inter-tribal conflict frequently involved two main spheres: factors regarding

women; and avenging misdemeanours committed by another clan or tribe against one's own group. Warner wrote that warfare among the Murngin assisted in maintaining polygamy for older men. Within the Murngin's population of about 3000, the ratio of women to men was about equal, with perhaps slightly more men, and with about half the population of men under sixteen.¹³⁶ However, each man averaged three and a half wives. Part of the resultant 'excess' of men was solved by men marrying mainly at middle age, while women married before puberty (with sexual relations occurring after puberty). The killing of young men in warfare was the remaining significant balancing factor. Based on actual records plus non-recorded estimates from Murngin islands 'where heavy fighting has always taken place', Warner estimates that about 200 young men were killed in warfare over 20 years, meaning that 700 fewer women were needed had they lived.

The killing of young men below the age of twenty-five, because of the ever-present blood feuds, makes up the balance.

The one important effect of warfare on Murngin society is the seasonal slaying of a small proportion of young men who have passed adolescence and are potential or eligible mates ...

Warfare, then, is one of the mechanisms on which polygyny is based. If war were abolished, the percentage of men would increase, and the pressure on the social structure created by seeking mates would probably be too strong for the present form of polygyny ... to survive.¹³⁷

Under the heading 'Causes of War', Warner opens with a summary. It is quoted at length here because it illustrates the enmeshment of inter-clan conflict and warfare within the maintenance of Law and social order among the Murngin.

Of seventy-two recorded battles of the last twenty years in which members of Murngin factions

were killed, fifty were for blood revenge—the desire to avenge the killing of a relative, usually a clansman, by members of another clan. Of these, fifteen were deliberate killings, against the tradition of what is fair cause for a war, and because it was felt that the enemies had killed the wrong people. Ten killings were due to stealing or obtaining by illegal means a woman who belonged to another clan. Five supposedly guilty magicians were killed by the clan members of victims of black magic. Five men were slain for looking at a totemic emblem under improper circumstances and thereby insulting the owning clan and endangering the clan's spiritual strength.

The idea underlying most Murngin warfare is that the same injury should be inflicted upon the enemy group that one's own group has suffered. This accomplished, a clan feels satisfied; otherwise, there is a constant compulsion towards vengeance, causing a continuous restlessness among those who are out to "buy back" the killing of one of their clansmen. The stealing of a woman provokes the same spirit, since the group feels itself injured; and only the return of the woman and a ceremonial fight, or the stealing of another woman, will satisfy the hurt to its self-esteem, unless the clan has retaliated by the killing or wounding of one of the enemy clansmen. The same feeling is instigated by the improper viewing of the totem—an insult and an injury to the entire clan.

Any of the above causes of war may be given deliberately or by accident, but in either case warfare is a certain consequence.¹³⁸

Eyre's early colonial description of revenge spearings and warfare among the peoples of Southern Australia bears general similarities to Warner's account. In the Murray district, Eyre witnessed a large meeting between the Nar-wij-jerooks and the Moorunde peoples, where restrained, controlled revenge spearings played a crucial role in maintaining amicable relations by settling blame over 'unnatural'¹³⁹ deaths of young people that inevitably took

place between infrequent meetings. While one might be respectful of this use of controlled, ritualised violence to safeguard good intertribal relations, it also signals the normality and acceptability of violence. It is also another example of communal punishment where multiple persons receive physical punishment, in this case because of their association with unknown persons who may possibly have caused deaths by sorcery.

In advancing, the Nar-wij-jerooks again commenced the death wail, and one of the men, who had probably sustained the greatest loss since the tribes last met, occasionally in alternations of anger and sorrow addressed his own people. When near the Moorunde tribe a few words were addressed to them, and they at once rose simultaneously, with a suppressed shout. The opposite party then raised their spears, and closing upon the line of the other tribe, speared about fifteen or sixteen of them in the left arm, a little below the shoulder. This is the generally understood order of revenge; for the persons who were to receive the wounds, as soon as they saw the weapons of their assailants poised, at once put out their left foot, to steady themselves, and presented the left shoulder for the blow, frequently uttering the word "Leipa" (spear), as the others appeared to hesitate.¹⁴⁰

Tribes also met 'for the purpose of war', with both sides fully armed, and formal battle lines, place, and time of day agreed upon, usually lasting three or four hours. These may involve many injuries, some serious, 'but it rarely happens that more than one or two are killed, though hundreds may have been engaged'.¹⁴¹

Intertribal conflict also broke out of controlled dimensions either in the form of chaotic and dangerous fights or cold-blooded slayings. Eyre reports that 'the most dangerous and fatal affrays' are those that occur spontaneously between tribes 'encamped near one another on amicable terms', but a conflict has suddenly erupted 'probably in relation to their females,

or some recent death, which it is imagined the sorcerers have been instrumental in producing’.

In the former case a kind of melee sometimes takes place at night, when fire-brands are thrown about, spears launched and bwirris¹⁴² brandished in indescribable confusion. In the latter case the affray usually occurs immediately after the body is buried, and is more of a hand-to-hand fight, in which bwirris are used rather than spears, and in which tremendous blows are struck and frightful wounds inflicted.

In wars males are always obliged to join their relatives by blood and their own tribe. Women frequently incite the men to engage in these affrays to revenge injuries or deaths, and sometimes they assist themselves by carrying spears or other weapons for their husbands. I am not aware that women or children are ever butchered after a battle is over, and I believe such is never the case. Single camps are sometimes treacherously surprised when the parties are asleep, and the males barbarously killed in cold blood.¹⁴³

Women and Children: Violence and Subjugation in Tradition

The sacred and supernatural realm of Aboriginal belief and Law imposed frightening, at times deadly, demands on all men, women, and children: ‘Sacredness was ... a condition of living’.¹⁴⁴ Much of this was such a different world, and the punishment that arose from sacred Aboriginal Law must have shocked early white settlers. Justice Michael Kirby refers to the 1875 Irbmankara massacre which ‘saw the killing of about 100 men, women, and children for an alleged act of sacrilege of which most of those slain were personally quite innocent’.¹⁴⁵ He then quotes T.G.H. Strehlow:

it was this readiness to kill persons who had committed sacrilege either knowingly or unwittingly (the fact alone was looked at, not any

mens rea) that caused a great revulsion against aboriginal religion in Central Australia after the arrival of the white population.¹⁴⁶

We might expect the late 18th and 19th century white settlers of Australia to be ‘revulsed’ by these very different and frightening aspects of Aboriginal religion and Law. There was cruelty, injustice, and capital punishment in Western law too, with the penal settlement of white Australia, a bleak testimony to its horrendous punishment for petty crime. But Western law was by the late 18th century based on the principle of proven responsibility, and its Christian religion had left behind most of its medieval horrors and was more about redemption through repentance and forgiveness. Apart from the shared human experiences of spiritual belief, reverence, fear, anger, revenge, and grief that Aboriginal sacred law gave expression to, there was little overlap, little that was familiar.

It might be expected that within the everyday realm of relationships between men and women, the gap may have been less noteworthy. The Western world of the late 18th and 19th centuries was still a very misogynist one, with women not yet regarded as full citizens, and Western law bestowing upon women the status of being little more than ‘owned’ by their husbands and subject to their authority. Despite this, from the first contact, white men were shocked by what they saw. Comments of first contact explorers and colonial officials provide evidence of this. First Fleet officer Watkin Tench’s observations of the widespread brutal treatment of Aboriginal women by their menfolk, including the famed Bennelong, have been frequently noted.¹⁴⁷ Louis Nowra quotes Governor Phillip’s documentation of the abusive treatment of men against women among the Eora people, and that Governor Phillip ‘spent some time trying to dissuade Bennelong from killing a woman’.¹⁴⁸ Early accounts from other colonial settlements sadly provide a similar portrayal. Some of explorer and magistrate Edward John Eyre’s

1840–1844 observations while in the colony of South Australia are presented here.

In his book, *An account of the manners and customs of the Aborigines and the state of their relations with Europeans*, Eyre wrote about the tribes of the Adelaide Plains and the Murray River. His knowledge comes primarily from his years of getting to know the Aboriginal people of South Australia, including three years as Resident Magistrate of the Murray District during the early 1840s.¹⁴⁹ He wrote his account because he found that Aboriginal people were ‘misjudged and misrepresented’ as fierce and dangerous, whereas he found them to be helpful and friendly even while he ‘stood singly amongst them in the remote and trackless wilds’. Eyre writes very critically of the white occupation of Australia, which he calls aggression.

To sanction this aggression, we have not, in the abstract, the slightest shadow of either right or justice—we have not even the extenuation of endeavouring to compensate those we have injured, or the merit of attempting to mitigate the sufferings our presence inflicts.¹⁵⁰

Eyre’s ability to see the colonial injustice and aggression against Aboriginal Australia did not compromise his ability to decry the subjugated status of the Aboriginal women.

In their domestic relations with one another polygamy is practised in its fullest extent. An old man having usually from one to four wives, or as many as he can procure.

The females, and especially the young ones are kept principally among the old men, who barter away their daughters, sisters, or nieces, in exchange for wives for themselves or their sons. Wives are considered the absolute property of the husband, and can be given away, or exchanged, or lent, according to his caprice.... Female children are usually betrothed from early infancy ...

Women are often sadly ill-treated by their husbands or friends, in addition to the dreadful life of drudgery, and privation, and hardship they always have to undergo; they are frequently beaten about the head, with waddies, in the most dreadful manner, or speared in the limbs for the most trivial offences. No one takes the part of the weak or the injured, or ever attempts to interfere with the infliction of such severe punishments.

Few women will be found, upon examination, to be free from frightful scars upon the head, or the marks of spear wounds about the body. I have seen a young woman, who, from the number of these marks, appeared to have been almost riddled with spear wounds.¹⁵¹

Women had little choice but to comply with their lot, although some did try. Kimm writes that

[b]oth Kaberry and Hamilton noted that young girls sometimes rebelled against arranged marriages, and strongly disliked their promised husband, but customary law sanctions were strictly enforced by a beating or death if they did so. This was recorded in the times of first contact in the Monaro and was recalled by a Djimbawu elder from Queensland in 1994.¹⁵²

Women’s subjugation and violent treatment occurred within a reported situation of troubled relations between men and women within traditional Aboriginal society, as evident in Eyre’s writings. Kimm wrote of Kaberry’s observation of ‘traditional society of East Kimberley’:

[T]he entire psychic relationship of the sexes is one of great social significance: there is much distrust, hostility, and insinuation of misconduct between them; jealousy, suspicion of infidelity and endless quarrelling with and over women.¹⁵³

Eyre observed that there was ‘little affection’ between husbands and wives.¹⁵⁴ He also

reported that while the men of southern Australia typically had a strong, healthy appearance, the women appeared physically deprived. This was probably, Eyre thought, due to the 'hardship, privation and ill-treatment' she must endure.

To her belongs the duty of collecting and preparing the daily food, of making the camp or hut for the night, of gathering and bringing in firewood, and of procuring water. She must also attend to the children; and in travelling carry all the moveable property and frequently the weapons of her husband. In wet weather she attends to all the outside work, whilst her lord and master is snugly seated at the fire. If there is a scarcity of food she has to endure the pangs of hunger, often, perhaps, in addition to ill-treatment or abuse.¹⁵⁵

It is emphasised that Eyre wanted to present Aboriginal society in a good light to counter prevailing unfair and inaccurate depictions about them. Both Joan Kimm and Ron Brunton note that scholars too, with no interest in derogating Aboriginal culture, recorded the traditional violence and sexual assault against Aboriginal women, including children. Kimm writes that '[a]necdotal and anthropological evidence appears to establish that violence towards women was part of traditional society and that it remains so today', with the following as a footnote

Julius Brockman, who was in the Kimberley in the 1880s and early 1890s when Aboriginal traditional society was still relatively intact, recounts incidents of violence from Aboriginal men to women. A woman was beaten and then in a further attack she was so seriously wounded with a hammer, that 12 days later she was still unable to walk, and a month later 'she was (still) very lame'.¹⁵⁶

In reference to palaeopathologist Stephen Webb's 1995 study of thousands of pre-historic post-cranial and cranial samples from sites across mainland Australia, Sutton writes

If people are in any doubt as to whether or not serious armed assaults on women and men took place in Australia over thousands of years prior to conquest, the archaeological record of prehistoric human remains settles the question decisively.¹⁵⁷

Webb's work, writes Kimm, 'establishes that these contemporary observations of traditional life are neither distorted nor biased'.¹⁵⁸

Equally difficult to take in is the prevalence and 'normality' of rape against women within traditional Aboriginal society, including in some districts, little girls. Both Nowra and Kimm provide searing accounts of this.¹⁵⁹ In a speech to the Sydney Institute in 2006, Co-chair of Reconciliation Australia, Mark Leibler, argued that 'to suggest that rape and paedophilia are part of Aboriginal culture is defamation ... It is slanderous and it is wrong'.¹⁶⁰ Brunton writes the following response.

Intimidating words from a prominent lawyer but ... it is he who is wrong. Classic works from distinguished anthropologists such as Mervyn Meggitt, W.E.H. Stanner, W. Lloyd Warner, and Ronald and Catherine Berndt show that traditionally, in many Aboriginal communities, practices that contemporary Australians would unequivocally define as rape and paedophilia were culturally legitimate and commonplace. The ethnographies contain accounts of adult men taking girls as young as eight or nine as wives and sexual partners, gang rape as socially sanctioned punishment for certain transgressions, and a number of other indefensible customs. Nevertheless, Mr Leibler's assertions went unchallenged.¹⁶¹

Women's Sadness, Women's Protest: Infanticide

Gillian Cowlshaw writes that in traditional Aboriginal Australia, infanticide 'has been reported for most of the areas of Australia for which information was available'.¹⁶² While the rate is difficult to establish, it occurred at a rate which meant women from most areas 'would

raise two or three infants'.¹⁶³ Eyre reported infanticide among the Aboriginal people of Adelaide in the 1840s, with women generally bearing five children but rearing an average of two children. He wrote that the first three or four were often killed.

Infanticide is very common, and appears to be practised solely to get rid of the trouble of rearing children, and to enable the woman to follow her husband about in his wanderings, which she frequently could not do if encumbered with a child.¹⁶⁴

Eyre also wrote that 'half-castes appear to be always destroyed'.¹⁶⁵ Cowlshaw notes that the usual theories for infanticide focus on some aspect of the child, such as deformity, prematurity, twins, or on external environmental or economic factors such as the impractical demands of breastfeeding along with caring for older children plus the huge remaining essential workload as wife and food gatherer. She argues that this does not make sense because it is frequently the first-born who are killed, by very young, just pubescent mothers, 'and that there is an element of rejection of motherhood that is significant in tracing the source of the mother's motivation'.¹⁶⁶ Cowlshaw's point here concurs with Eyre's report that the first three or four children are the ones most likely to be killed.

From her study of the Goinjimbe people of Southern Arnhemland, conducted during the 1970s, Cowlshaw argues that the source of young mothers' rejection of motherhood in the form of infanticide is a tragic protest against the relentless unfair workload and exacting rule-bound misogynist oppressions and violences she must endure.¹⁶⁷ She writes

Resentment leads girls and women to deny their male kin, especially husbands and brothers, their infants.¹⁶⁸

Cowlshaw's seminal article makes for harrowing reading. First, women's workload

from childhood was much greater than men's. Women's role was defined by 'self-sacrificing behaviour'. This could include immediately sacrificing food prepared for themselves to men who happenstance come across the women and demand the food be handed over. Second, women's daily lives were steeped in the fearful, impossible, punishing demands of brother-sister avoidance.

It is brother or "brother" who must not suspect that a girl or woman is going to relieve herself. A sister must avoid sitting or walking too close to her brother; she has to avoid anything that would cause anyone to shout or swear at her; she cannot touch anything her brother has handled. To a young girl who has a brother a few years older, avoidance must be first impressed dramatically ...

One girl of ten was sitting on the toilet when her "brother" (25 years) opened the door. He at once ran to get his spears but could not find any. He then threatened his little "sisters" of three and five years old. The older one disappeared ...

Actual attacks must be made with spears because a brother cannot touch his sister with his hand. Women cannot retaliate but only run away.¹⁶⁹

Third is the oppression that young girls endured by being promised from before or at birth to be wife to a much older man, often as old as her father: '[t]he high rate of elopements which is evident despite violent even fatal punishments, is evidence of the dissatisfaction with marriage which many women feel'.¹⁷⁰

Cowlshaw notes that '[t]he relaxation and lightheartedness apparent when women are away from camp on fishing expeditions and during the women's ceremony, is direct evidence of the pressure they are usually under'.¹⁷¹

Not disputing Cowlshaw's profound insights and analysis, infanticide as a population

control measure is also likely. William Rubenstein, Professor of History at the University of Wales, writes that, in Australia, infanticide was practised on a massive scale before white contact, with perhaps 30 per cent of babies killed, and was a form of population limitation given the imperative to survive within the fixed economic limitations of the land. It remained widespread on remote communities until a few decades ago.¹⁷² Rubenstein writes that

[t]he anthropologist Aram A. Yengoyan, who carried out field work among the Pitjanjatjara people in 1966-67, found that infanticide there “may have varied from 18 per cent to 20 per cent of all births”, although ‘it would have been higher if infant mortality rates were not as high as they were both in the bush and contact populations’ ... Yengoyan states that “Presently infanticide is no longer openly practised on missions and government stations”.¹⁷³

THE CONTINUITY OF TRADITIONAL VIOLENCE

Sadly there are thousands of examples of ‘legitimised’ injurious violence, debilitating beliefs and misogyny of traditional origin that continue to give power to some and to hurt many others in Australia’s remote Aboriginal communities. Just a few are presented here. While the violent behaviours may be shaped by modern impacts and contexts, they point to continuing stark differences between traditional Aboriginal belief systems, power relations and customary law, versus mainstream norms and law based on individual human rights. What shocks outsiders is often seen as ordinary by the communities. These examples also demonstrate how remote communities’ cultural and geographical distance attenuates mainstream influence. This protects the powerful of the community, including a degree of immunity from mainstream law, and increases the vulnerability of victims and whistleblowers. In particular, by providing

scope for other cultural norms, our culturally respectful legal and policy systems render these remote communities as places where dominant men can continue to maintain their rule.

‘Ordinary People’ are Different in Different Cultures

In his submission to the Senate Select Committee on *Indigenous People and Mental Health on Cape York Peninsula*, archaeologist Roger Cribb makes the following observation:

In Aboriginal societies on Cape York Peninsula people are raised to be very personally and physically assertive, including the women. This kind of behaviour is tolerated, even encouraged within Aboriginal society but often leads to problems with the mainstream legal system. It could greatly enhance paranoid or manic-type behaviour.¹⁷⁴

A similar ‘ordinariness’ is also present on Palm Island. Eames notes its deadly consequences. In his 1993 article, ‘Aboriginal Homicide: Customary Law Defences or Customary Lawyers’ Defences?’,¹⁷⁵ Eames comments that cases involving Aboriginal spouse homicide ‘have a very familiar ring to them for any lawyer who has handled Aboriginal cases in the two decades prior to 1992. It is tragic and commonplace for there to be so many homicide cases involving Aboriginal people as victims and for the person accused to also be Aboriginal and to be the male spouse of the deceased.’¹⁷⁶ Eames examines two cases of spousal homicide, where the defence was that the woman behaved in such a manner that would provoke an ‘ordinary person’ of the community, in the context that husbands have the right to physically punish wives under customary law.¹⁷⁷ The following is an extract from Eames’ account of a case that occurred on Palm Island, heard in a Brisbane court in 1986.

The appellant was convicted of murder of ‘his woman’ by stabbing her with a knife which

penetrated 15 cm, passing through the liver, bladder and aorta. The defence was that the accused had not formed an intention to kill or cause serious bodily harm but intended to 'cut' the victim on the arm or her side so as to make her go home with him, which she was refusing to do. The appeal was concerned with the refusal of the trial judge to allow an expert witness to be called to give evidence of what were said to be the cultural practices of Aboriginal people on Palm Island. It was said that it was consistent with conduct on the Island for a person to use a knife in the way the accused did and yet not be intending any serious harm.

In a statement supplied to the appeal court, it was noted that the evidence which the expert, a sociologist, would have given was to this effect:

'In general terms, the distinctions in our culture between discipline, punishment, violence, and assault—including the use of weapons—have little impact on a very large section of the Palm Island community—male or female.'

The witness said that, whereas a non-Aboriginal person brandishing a knife in Brisbane would be presumed by onlookers to have the intention of doing harm to someone, that would not be the perception of Palm Islanders if they saw such a scene on the Island. The witness said:

'Assuredly, some offences on the Island are motivated the same as the above example. However, a very large proportion of such uses are, as their motivation, a desire to discipline and punish a person for violation of a code of behaviour or conduct. And this code, as it applies to heterosexual relationships, is based on a traditional sense of male superiority and feminine subservience. While not ritualistic, the men very often feel it is their 'right' to discipline 'their women' ... Even the severity of the injuries is seen differently on the Island. 'I intended to cut her' is a phrase often heard and we may be mortified at the prospect of being 'cut'. However this

is readily accepted by Palm Island people as attested to by the very large number of scars on these people.'¹⁷⁸

The judges rejected an appeal and agreed that such evidence was not admissible. In this case, contemporary law based on individual rights won through.

Justice McPherson noted that if there was such a practice and custom then it was in contravention of the Racial Discrimination Act which incorporated the right to security of individuals from violence provided by Article V of the Covenant on Civil and Political Rights.¹⁷⁹

Eames notes that while such evidence based on customary law 'more often than not' does not 'succeed in allowing a defence', 'similar arguments have been frequently successful when advanced during the sentencing process', resulting in a tendency for courts to bestow shorter sentences for violent crimes when the accused is Aboriginal.

In relation to crimes of rape, Eames writes

As a result of submissions made on behalf of accused people, similar comments to the following observations of Gallop J. have been repeated many times by sentencing tribunals:

I cannot ignore the fact that whether the European society likes it or not, rape is not as seriously regarded in the Aboriginal community as it is in the European community.¹⁸⁰

Eames concludes by emphasising the competing civil liberties between Aboriginal perpetrators and victims here, and that the legal system's failure 'to represent the opinions of Aboriginal women' needs to be addressed. Nevertheless, Eames' key message is that the scope allowed to courts of law and juries is too restrictive in its definition of an 'ordinary person' when it comes to violent acts committed by traditional Aboriginal people, and a more relativist approach would be fairer. This might be as

‘expounded by Kearney J. in *Jabarula v. Poore* (68 ALR 26)’, who said that

the ordinary person was one on the remote community where the killing occurred and was a person ‘who possesses such powers of self-control as everyone is entitled to expect an ordinary person of that culture and environment to have’.¹⁸¹

Whistleblowers, Witnesses and Victims: The Fear of Mentioning Anything

Under-reporting of violence and abuse on the communities is a major recognised problem mentioned in several recent reports.¹⁸² A nurse who spent years working in remote communities related that she witnessed the devastating readiness of these communities including ‘tiny little communities’ to use violence to silence remote area nurses and other health workers.¹⁸³ On some remote communities, the culture of protecting perpetrators was so strong that it could be dangerous for nurses simply to carry out their core vocation of care and advocacy for the safety of their patients who are victims of violence. To speak out on behalf of their patients could result in the nurse receiving threats or actual violence from the perpetrator or the perpetrator’s family.¹⁸⁴ Furthermore, while some improvements in nurses’ housing security and clinic security took place, within the health services there seemed to be a culture of compliance or acceptance of this community norm of protecting the perpetrator. This meant that when nurses and other health professionals did speak out about the violence against people in the community and violence against staff, they could receive either no support or worse, might even lose their job or be blacklisted.¹⁸⁵ This situation reflects *The Australian* journalist Nicolas Rothwell’s quote from ‘a respected council clerk in a remote community’:

There’s no control and no responsibility. It’s a beautiful system designed by the Aboriginal

men to protect Aboriginal men. They’ve got the white people sorted out; if you mention anything, you’re fired instantly and will never get another job in the Aboriginal industry again.¹⁸⁶

From years of witness experience and observation, the following was also shared:

when violence was addressed in the communities, one was either attacked directly, or down the track later on when it did not seem connected to the reporting, or someone in the person’s family was injured. The police spoke to me very strongly one time about a knife attack on me, asking that I lay charges. The youth’s uncle asked me not to do it and that they would deal with it in ceremony. I laid charges. One of the nurses in a neighbouring community was raped while beaten in the head with a rock ... I am sad that some events out bush caused dreadful anguish for some staff and has affected their lives. There really were some terrible events. I recall some of the Aboriginal people did try to shield staff at times, probably placing themselves in danger also.¹⁸⁷

These witness accounts point to a ferocity in community defence of perpetrators on a scale rarely seen in mainstream Australia, suggesting a different, pre-contact norm. Witnessed actions against remote area nurses for speaking out against violence in the community include:

- threatened/told they were going to be killed or others were going to be;
- threatened with guns/axes/sticks/rocks/star pickets;
- shot at/beaten/raped/molested;
- homes/vehicles broken into and items stolen or smashed or despicable things done to personal items;
- publicly defamed, called dreadful adjectives in public;
- derided at professional remote area nurse/medical/public health associations and organisations;

- careers stopped if they didn't toe the line by keeping silent.¹⁸⁸

These experiences occurred in just a few remote communities over a few years. The nurses found that when they did speak out, until recently no-one believed them, neither about the violence within the community, nor about the threats that the nurses themselves received. Worse, they present a cover-up of still untold violence against Aboriginal women and children in these communities. Given that these are experiences from a just few communities, how great must be the extent of cover-up across remote Aboriginal Australia, and what is the real gravity of injury against Aboriginal women and children, both boys and girls, that remains as yet untold?

With such hideous threats against those who speak out, it is little wonder that, even today, few service providers, victims or their families speak out. In her article 'Secrets in the shadows', journalist Natasha Robinson writes of the 'terrifyingly dangerous' situation of whistleblowers.

This is the real story behind the emergency intervention in remote Aboriginal communities, where vigilante justice is aimed not at perpetrators but at whistleblowers, and reporting child abuse is so terrifyingly dangerous that even the secret codes of the nation's top crime commission cannot encourage those who know to speak up ... *Inquirer* was told of a case in [a] central Australian community of a child witnessing the rape of a toddler. The alleged perpetrator was a 12 year old boy. After a child witness confided to an adult about the incident, it was reported to authorities. The whistleblower was hunted for weeks by members of one of the community's powerful families.¹⁸⁹

Perhaps the most heart-breaking silences are depicted in the 2008 Mullighan Inquiry into child sexual abuse on the Anangu Pitjanjatjara Yankunyatjara (APY) lands.¹⁹⁰ It is a lengthy report, and therefore impractical to convey

more than glimpses. The focus here is on the problem of widespread victim and community silence. The Inquiry emphasised the serious under-reporting of child abuse, with fear of dangerous consequences, lack of a sense among victims of a right to say no, young age, and language barriers among causes of this under-reporting.

This Inquiry 'concluded that the incidence of sexual abuse of children on the Lands is widespread'.

Some of the sexual abuse involved very young children, well under the age of 10 years. Many children were probably repeatedly abused over some years.¹⁹¹

The cases were placed into the following categories

extra-familial men abusing girls, extra-familial men abusing boys, extra-familial children abusing children and intra-familial abuse. An abused child rarely fell into only one of these categories.¹⁹²

In this Inquiry, teachers speak of widespread sexualised behaviour among children, including rape of young girls by young boys. The school is seen as a place of safety for children, and teachers try to equip girls with the idea that they can say 'no' to sex. In the words of one principal

The majority of our boys and the majority of our girls I have no doubt, when they're not in our care are sexually active, and I have no doubt that the great majority of that activity that takes place is without consent in our terms ... the girls very clearly say "Well, we can't say no, and if we say no, they're going to drag us off anyway, so we do", and that happens.¹⁹³

One 'silence' story is of a teacher's suspicion based on tears 'about a young Aboriginal girl who had otherwise been a bright, happy child. One day the girl came to school and

... just laid her head on my lap and sobbed. Like, heartbreaking, wrenching sobs. There was snot and tears dripping down my legs and she sobbed, probably for about 20 minutes.¹⁹⁴

While she did not feel that the girl had been sexually abused at the time, from then on she ‘... just kept an eye on her’. Later, when the girl’s and her siblings’ behaviour changed too, she notified the Department, but the teacher left the school and ‘doesn’t know what happened to the children’.¹⁹⁵

Just as heart-breaking is a ‘double silencing’—lack of English *plus* fear to speak in the presence of an Aboriginal worker—what a harsh testimony to the betrayal of abused Aboriginal children by both Aboriginal practice and white policy.

These kids can’t read and write, quite a lot of them. In any practical sense they have functional illiteracy.’ This lack of literacy and ability to speak English is a theme that is common in many instances of child abuse investigated by the Inquiry. By way of example, one mandatory notifier told the Child Abuse Report Line (CARL) that a girl, aged 14 years ‘... is having difficulty explaining how she is feeling because of language and cultural issues, but [the girl] refuses to have an Aboriginal worker present when she talks to notifier and other non-Aboriginal people.’¹⁹⁶

The Mullighan Inquiry records that community people fear speaking out because of the harsh consequences of doing so. In the words of a witness

You can be violent and destructive to get your own way ... and anybody who stands up to you gets hounded, sometimes having to leave communities and always being talked about and sniggered about by ... often powerful men in communities, so, not surprisingly, people don’t want to testify.¹⁹⁷

The Inquiry is permeated with references to customary demands and practices, such as

boys being away from school for initiation ceremony and when back at school, no communication must occur with the girl students or with the younger boys.¹⁹⁸ There is wrong-way marriage, promised marriage, trouble communicating in English among some of the children, the threat of sorcery to force a girl to have sex. One health professional became aware of elderly men and middle-aged men sexually abusing girls, the girls telling their stories in the sand.

Girls were in her home nearly every night and ‘they sit outside and they sit and talk the story with the wire and they tell stories in the sand’. Sometimes they mentioned the names of some of the men.¹⁹⁹

The Inquiry seems to favour the idea that forced sex and sex outside marriage are not traditional, even though the perpetrators themselves are reported by one health professional to see it as ‘their kind of cultural initiation ... as regards consent ... I think very, very few men would see it as an issue’.²⁰⁰ The Inquiry comments:

These observations are contrary to views expressed by traditional men and women to the Inquiry.

Sexual contact between young persons should not occur outside ‘marriage’.²⁰¹

Referring to another Report, Joan Kimm provides a generalisable caution to any confidence that it is not traditional.

The sexual use of young girls by older men, indeed often much older men, was an intrinsic part of Aboriginal culture, a heritage that cannot easily be denied. Indeed as *Jamilmira’s* case shows, in western Arnhemland customary law marriage is part of living culture. Nonetheless, in general law terms the promise entails carnal knowledge of girls below the age of consent. Hence the submissions made to the Gordon Inquiry by Aborigines, who are observing child

sexual abuse in their communities, that this accepted culture still influences present behaviour, should be regarded very seriously.²⁰²

Perhaps it was the case that sex outside marriage was not allowed in traditional times on the APY lands. However, across much of Aboriginal Australia, promised marriage of young girls to much older men was practised, with young girls having no option on pain of death for refusal. As a likely key source of male, particularly older male, prerogative on the APY lands, this indeed 'should be regarded very seriously'.

The ferocity with which remote community perpetrators and their supporters attack those who speak out against violence is testimony to the high value that the powerful in these communities place on the male 'right' to practise violence and how much they resent outside intervention against that violence. These priorities and norms are not derived from the mainstream. Rather, they see white law intervention as lacking legitimacy, and protecting perpetrators against white law intervention is more important than protecting their own vulnerable women and children from their own male aggressors. This 'other' country is a dangerous country.

Intervention Meets Tradition

Natasha Robinson's article 'Secrets in the shadows', while referring to 'perverted' traditional law, succinctly portrays the strength of customary law within remote cultures, and its continuing utility as a source of power and intimidation. Some of the strident opposition to the Northern Territory Intervention emanates from the Intervention's threat to expose and eliminate violent and corrupt community power structures, steeped in traditional forms and expressed in contemporary contexts. Robinson writes of an incident near Papunya, central Australia.

Months ago, a 14-year-old boy dropped dead after a footy match in Mount Liebig, about 70

km down the road to the west. Senior men have been on the warpath ever since. The boy's death was nobody's fault, but this is a world where payback, retribution, spearings and mob violence are ever-present. Since the boy's death in February, clan clashes have rocked Papunya and Mount Liebig. The perpetrators from powerful families call it payback. Rather, it is traditional law perverted to maintain the power and status of the men who are fighting to maintain an iron grip on their homelands in the face of the biggest intervention in indigenous affairs in recent history.²⁰³

Robinson reports a case in another community where a 12-year-old boy raped a two-year-old child. This instance displays the protection that tradition affords perpetrators but not victims, and how mainstream respect for 'other' culture compromises potential victim safety.

When FACS officials finally attended the community ... they came only to remove the two year old child. Community workers, terrified that the 12-year old boy would rape again, took to sleeping in the boy's house at night. When FACS finally came to take the child into care, after a delay of many weeks, the boy's family whisked the child into cultural business. Police refused to transgress on ceremonial ground and FACS workers retreated. Six months on, the boy is still in the community and no further attempts have been made to take him into care.²⁰⁴

Regarding the Intervention's goal to address child abuse, Robinson writes that 'complicating the picture is the ongoing tendency of traditional Aborigines to rely on customary law in punishing perpetrators of sexual abuse or any other crime':

Senior Papunya man Sammy Butcher says that despite changes to territory law that make customary punishment illegal, spearings and other forms of traditional payback are still common. Asked if such punishment was more effective

in child abuse cases than reporting to police, Butcher says customary punishment was the first priority of many traditional senior men. “We’ve got to do that first and then go to the police,” he says. “The police can deal with it afterwards.”²⁰⁵

Studies by Contemporary Anthropologists—Victoria Burbank and David McKnight

In her examination of women and violence in Mangrove, Burbank depicts a world of continuity with traditional mores about violence and aggression. The following extract points to its ongoing ‘normality’. It also contains reportage by a resident of the reduced severity of violence compared with pre-contact times.

From the Aboriginal perspective, women’s involvement in overt expressions of anger is “natural”. From my perspective, however, this involvement is largely a product of the ways in which anger and aggression are culturally constructed, and these constructs include precepts for action and reaction.

That women at Mangrove recognise aggression’s potential for serious harm is seen in Tina’s discussion of the weapons people use.

In olden times women here didn’t have *nulla nulla*, only spears and tomahawk. That tomahawk can open up the head, brains spill out: look, some women have scars. That spear can make the heart and liver come out. *Nulla nulla* is better, only blood from skin, that’s all.

But if aggression is an inevitable outcome of anger, how can people be protected from its deadlier effects? Overt aggression at Mangrove is not regarded as extraordinary, deviant, or even antisocial. Nevertheless, women express considerable concern that nobody be seriously injured.

Steps are occasionally taken to ensure that others do not become angry, and fighting is sometimes

discouraged. But, by and large, the expression of aggression is expected. Most efforts to control its destructive potential are thus focussed on the structuring and containment of aggressive acts.²⁰⁶

Burbank then describes at some length a ‘*nulla nulla*’ fight between a woman named Lily with several other women, because Lily thought that they broke her son’s arm. The fight ends in minor injuries and apologies when Lily realises that her son’s arm injuries were superficial with no breakage. Burbank remarks that ‘the manner in which Lily and her opponents fought was, for the most part, rule-governed behaviour.’ She also describes the woman’s fighting stick, the *nulla nulla*, as a eucalyptus stick about 3 to 4 feet in length, and that arms and legs, not the head, were to be hit in these fights. Nevertheless, the women attempted to hit Lily on the head, which Lily blocked with her *nulla nulla*, and Burbank writes that in attempting to hit Lily on the head, ‘her opponents were not acting in a completely lawless manner; it is recognised that someone who is very angry may well attempt such a blow’. Burbank quotes some community comments.

You shouldn’t hit someone on the head, but you do if you get wild for something like food or about your children.... You have to be careful of the other women when you fight. Watch her eyes (to see where she is going to strike).²⁰⁷
(Burbank’s brackets)

Burbank writes ‘indeed a part of learning how to fight with a stick is learning how to protect the forehead’. Burbank continues at length about rules and decisions governing non-combatant intervention to reduce serious injury. While these traditions of intervention might be reassuring to some, Burbank’s descriptions depict a world where violence is a tightly integrated aspect of everyday culture, where physical aggression is quickly resorted to, and everyone has a familiarity with spears, *nulla nulla*, beatings and blood.

By mainstream standards, the tradition of intervening in fights, as in the following incident described by Burbank, should carry little reassurance.

Once when [a woman's betrothed] was drunk he stood outside her house and swore at her. [The woman] got up and beat him from head to toe, gashed his mouth, dragged him to the wash house and beat him with a hose. She would have done more but her mother pulled her off, and when that didn't stop her, hit her on the head.²⁰⁸

David McKnight's analysis of violence on Mornington Island also depicts continuity with the past.

Even before the advent of Europeans there was much violence among the Kaiadilt and other Wellesley Islanders. This was particularly so for the Kaiadilt where most of the violence appears to have been about women.²⁰⁹

Over the years, differing white impacts affected its rate and expression. In the pre-Mission era, the various tribes before they were co-located on Mornington Island were warrior peoples where competition over resources included fighting and killing between clans and tribes for women and food. Also among those from the Wellesley Islands, 'the incidence of polygyny was high and the competition for wives was intense and sometimes lethal, especially among the Kaiadilt'.²¹⁰ This became more intense in times of 'population pressure and poor hunting conditions', as witnessed among the Kaiadilt during the years 1944–1947,²¹¹ when fights over women and food increased, with more killings between warriors and more abductions of women.

Then, in 1948, the killings stopped. From 1948–78 'when the Kaiadilt were under Mission hegemony, there were no more killings'.²¹² While violence remained a normality during the mission years with fighting rules shaped by kinship lines, 'self-

help', payback, and 'square-up' continuing, violence was worse both before and after the Mission era.

Everybody, boys and girls, men and women young and old, stand up for themselves. Although women are disadvantaged nevertheless they, as persons, participate in the fights. Even though a woman knows she may be beaten, and in the pre-Mission period risked being killed (although the risk was greater for men), nevertheless as a person she evidently feels compelled to give voice to her opinions and fight just as earnestly as men, otherwise people would regard her as a coward ...

The lot of women had improved because they had recourse to *kantha* Belcher when their domestic situation became particularly dangerous. Women felt safe under the missionaries.²¹³

With the departure of the Mission, lethal violence rose again. Mornington Island presents a tragic and telling lesson. The Mission era offered women protection, but it suppressed rather than severed the norm of violence, which remained strong. The Mission era introduced Western interpretations of events that undermined, probably irreversibly, traditional beliefs such as sorcery, Dreamtime cosmology and Law, while the post-Mission era brought little more than a life of dependence on White administrators, welfare and alcohol, and inadequate authority and point to life. McKnight depicts a situation where the past is forever gone and where the limited mainstream engagement demands no responsibility, and hence no meaningful participation. The resultant void and meaninglessness offered no control over the continuing norm of violence, while also causing suicide to rise.²¹⁴

McKnight's depiction of post-Mission Mornington Island evokes the 'fork-in-the-road' heartbreak facing many remote Aboriginal communities, and a part-explanation for the attraction that the cultural restoration path offers. Facing the scourge of alcohol abuse,

empty welfare-based materialism, the general meaninglessness of life and its associated suicide,²¹⁵ and the epidemic of violence, the options for escape are integration, or embarking on a dangerous quest for restoration of the past, where a Dreamtime cosmology and its powerful, fierce Law gave shape and pride to the old Law Makers and the brave young warriors.

While the latter has strong romantic or ideological appeal, as McKnight has pointed out post-Cartesian thought is now too strong amongst the people of Mornington Island, rendering restoration of traditional belief systems patchy or superficial. What is more, the path to more tradition is a path back to sanctions and norms that are violent, vengeful and misogynist. Above all, there is a tendency to identify the violence on communities as manifestations of despair.

Instead, the causal relationship may well be the reverse. The cruel juxtaposition of communities' atavistic norm of violence with the anti-violent norms of mainstream Australia is a probable cause of despair, with any 'legitimate' reason for an act of violence quickly followed by an aftermath of grief and self-blame that would be experienced by any young Australian man. The tragic recent suicide of a young Elcho Island performer after his impulsive act of serious violence comes to mind.²¹⁶ Given such misery, a critical question emerges: why is the path to integration not being undertaken by the people of these communities?

DANGEROUS LANDS

In the course of teaching I discussed with two Aboriginal students issues of domestic violence, an area in which I had some experience as a

solicitor, although only with non-Aborigines. The two students were intelligent, self possessed and mature young women who were leading independent lives in an urban environment. Each said that while they would not tolerate violence from men in an urban setting they would do so if they were living a traditional lifestyle, that this was expected and would be part of their life under customary law.²¹⁷

This quotation is an encounter with the reality that Aboriginal communities remain caught in tradition. The passage is both hopeful and disturbing. It is hopeful because it suggests that today's violence among Aboriginal people has meaning only in certain contexts. In particular, it indicates that the norm of violence is not readily transported out of traditional contexts by individual Aboriginal people who, when they are not living in a traditional community, lead

positive, integrated lives within mainstream society. Also, these individual Aboriginal people seem to have a level of choice, or at least objectivity, about when and where they will tolerate violence. To that extent, they have more control and freedom than if only the traditional context were available to them.

It is disturbing because it means that even among educated and urbane Aboriginal women, there is a respect for, and a willingness to be subjugated by, the violence of Aboriginal custom and Law. It also means that visits to traditional communities on traditional lands can be dangerous for women, particularly for Aboriginal women, but also for non-Aboriginal women. Here are some sad occurrences of this danger.

The following incident speaks of the peril experienced by a young Aboriginal woman who visited a community to learn of her

*Violence ... has more
to do with traditional
expectations, mores,
and permissions to be
violent*

culture. What she actually learnt was not what she sought to learn, and to call her naive is to excuse far too lightly the purveyors of the traditional as idyllic.

A young woman of some aboriginal blood came from the south to one of the communities. She was looking for her 'tribal family' and to learn traditional ways. She was a reasonably well adjusted and successful singer. She was married off to a young full blood. He locked her in the house, denied her contraceptives and when she did not fall pregnant blamed her and beat her dreadfully. She was in fear of her life. But how to escape? He took her money, made her into a slave and when the light plane came, as it did regularly, there was no way she could escape from such remoteness. She did, with help eventually. She was destroyed.²¹⁸

In his book *From Hunting to Drinking*, the anthropologist David McKnight relates the phenomenon of white women whose romantic ideas about traditional life placed them in peril. Here, the Mornington Island youths were able to treat the women well in the mainstream context, but became violent in the traditional context.

There have been a few cases of young White women forming relationships with Mornington Island youths and expecting to live an idyllic life close to nature. They soon discovered that their boyfriend's behaviour changed when they were on Mornington. They usually departed after the first 'proper good hiding' and invariably by the second.²¹⁹

This story also indicates that the men, too, have choice about when and where they can be violent. It is a strong indicator that the violence has less to do with Aboriginal men's loss or brokenness due to white colonisation, such as separation from their spiritual lands or being directly affected by the Stolen Generation; or the need for anger management or cultural healing; or even the curse of alcohol or other violence-promoting substance abuse.

No doubt these realities can be contributing factors. Nevertheless, it has more to do with traditional expectations, mores, and permissions to be violent. No matter how unfair they, their family, or their community have been treated or continue to be treated by mainstream Australia, it is—in seeming irony—the mainstream context where Aboriginal violence is more effectively suppressed and less tolerated by Aboriginal people themselves. It is in the traditional context, on lands of Dreams and Ideals hard-won after years of political battles with their White conquerors, where violence is legitimised as a proper tool to apply Law and to uphold male dominance over women.²²⁰

This is a difficult area to fathom, particularly because there are apparent contradictory factors at work here. First, a difficulty in confronting injurious cultural norms like traditional violence concerns the psychology of culture. Anthropologist Peter Sutton's insights are important here. Addressing the 'unreality' present in the shift in government Aboriginal policy towards a voluntaristic 'taking of more responsibility for their own betterment', Sutton writes that

culture is not merely a consciously assumed personal attitude that may be donned or doffed at will ...

In this context, the trouble with culture is that it is neither fully conscious and subject to voluntary control nor wholly unconscious and beyond being brought to mind. Culture consists of the interplay between 'unreflexive daily practice' and our partial awareness of what we are doing and thinking ... A vast proportion of our cultural makeup is developed in infancy and childhood ... By the time we reach what is sometimes called the age of reason, reason alone is seldom able to rearrange our cultural makeup overnight or merely at will.²²¹

Second, in apparent contradiction to the fixed nature of one's cultural makeup as

described by Sutton, the above examples of Aboriginal individuals' changes in tolerance and behaviour regarding violence suggest that cultural norms about violence do seem alterable at will to fit different cultural contexts. Perhaps the explanation is that the norm itself is a complex, nuanced, bi-cultural one, with the norm of violence being conditional on a deeper personal need. I suggest that the norm might be something like this.

My priority cultural norm is that I conform to the norms of the culture that I am presently living in and participating in. I have absorbed enough of both the traditional and the mainstream cultures since childhood to feel a belonging and identity to both, and to know what the norms are and how to practise them appropriately in both cultures.

If this is so, it is not that surprising. People generally want to conform to their culture. They tend to be as violent/non-violent, and as tolerant/intolerant of violence, as their culture expects and allows. Some, probably many Aboriginal people, have two cultural contexts. This reality is what Eames was examining in the legal argument that a 'normal person's' behaviour in Palm Island is different from a 'normal person's' behaviour in mainstream Australia.²²² Certainly, there are Aboriginal men and women in these communities who work hard to stamp out destructive norms. But traditional norms about violence and harmful, non-rational beliefs of a traditional form remain rife and continue to cause great harm. On these precious lands, there is 'less shame', and 'less need', to suppress or hide the violence.

Even among less traditional Aboriginal people with mainstream associations such as the young women in Kimm's and the young men in McKnight's stories, there are men and women who find meaning or purpose in the toleration or practice of violence when they visit their traditional kin and country. Given such contextual dependence, this toleration

probably has less to do with belief and more to do with psychological drivers. These could include wanting to be culturally accepted by 'proving' one's culturally 'authentic' identity; wanting to show cultural respect by submitting to its different norms; and exploiting a cultural context where the 'benefits' of violent behaviour outweigh its costs.

There are additional dangers here. Predominant, orthodox political thought places high value on Aboriginal 'authenticity'. This includes benign processes designed to 'rekindle' positive, celebratory aspects of traditional culture among more mainstream, urban-based Aboriginal people, although even these well-intentioned processes are not always that benign. I witnessed a 'bring some authenticity to urban Aboriginal people' process, organised by a national Aboriginal research centre. The process was based on the idea that traditional Aboriginal Australia can provide a gift of 'authenticity' to urban Aboriginal people who, lacking it, must of course need some. The cultural gift was introduced as a 'surprise' at an urban-based workshop that first presented as a more benign 'getting to know you' visit from some very impressive and gracious remote area traditional Aboriginal people. With no prior warning or permission about the granting of the very powerful gift, all workshop participants on the second day were granted traditional skin names and relationships between each other. This included the white people in the workshop including myself, causing me considerable distress because it attached me as mother, sister, and daughter to a family, whereas I very much wanted to remain a neutral outsider in my research. However, to refuse participation would have been a very public and impolite act.

We were then asked to seek out our first, second, and third choice 'right-way' husbands and wives based on these skin names. While people seemed to undertake this in a spirit of fun, I worried whether we were playing a risky

game. I wrote at the time that all would be well if taken lightly. However the workshop organisers were serious in their message that the re-establishment of traditional kin structures was a path to healing for urban Aboriginal people.

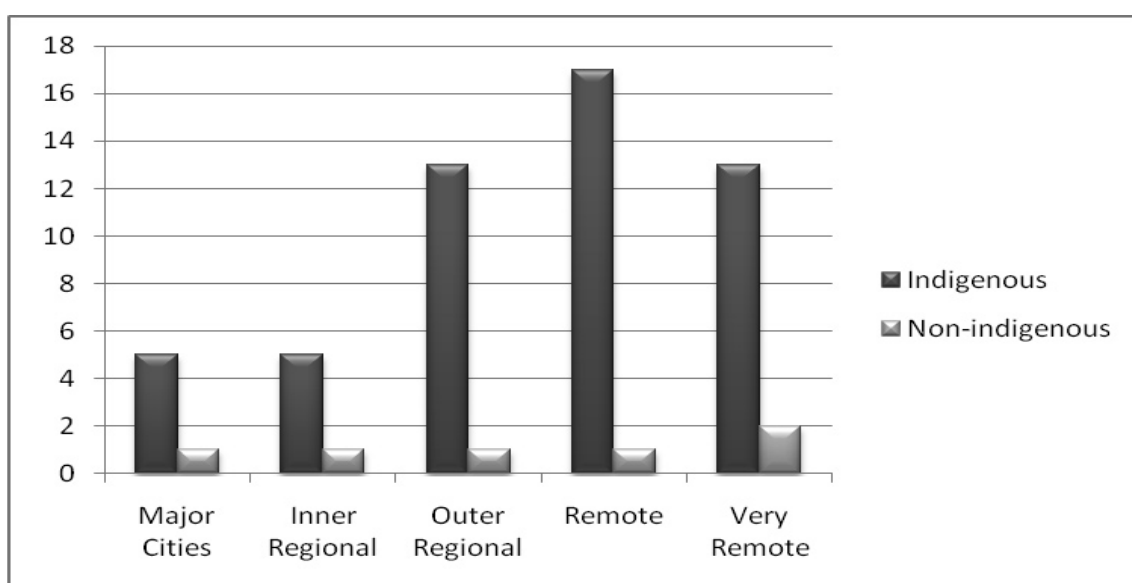
At the end of this 'new family' day, I heard one of my new female 'relatives' plan an evening out but they lacked transport, so perhaps they could ask 'her' as they looked over to me, and I wondered if this was about being 'family' now. Fortunately, however, the novelty quickly wore off. A month later, a local white service provider told me that urban Aboriginal attendees were expressing a fair amount of skepticism about the workshop's process, including the view that adopting 'tribal' ways was 'going backwards', proclaiming that 'we're city Aboriginal people and proud of it!'²²³

Orthodox policy would tend to promote the Aboriginal discrete community's authentic status into a befitting generator or reference point for 'norms' for Aboriginal people who live within mainstream Australia, particularly given the high rate of community people who visit urban family. This could in part

account for the higher rate of violence among Aboriginal residents in mainstream localities, compared with their white neighbours. No doubt, the violence and dysfunction in many communities cause distress for the many non-violent Aboriginal people living in mainstream settings. This must be a source of great stress, sadness, and unwanted alienation from their people and the many unique and valuable aspects of their culture that they would otherwise love to more fully embrace and celebrate.

Second, many Aboriginal communities are so immersed within the traditional context which generates the normality of violence, far removed culturally and geographically from the mainstream, that they are demonstrably unable to overcome that violence even when they want to (they are not bi-cultural). Within traditional Aboriginal contexts, culture provides inadequate scope for non-violent choices. The effective choice thus becomes adopting a predominantly mainstream culture, with its much stronger culture of restraint against violence. The majority of Aboriginal people have chosen this path already. For the thousands who have not, the burden of

Figure 1. Homicide rate per 100,000 persons, by remoteness, 1999-2000 to 2004-05



Note: Aboriginal homicides are where both victims and offenders of homicide are either Aboriginal and/or Torres Strait Islanders. Non-Aboriginal homicides are where neither the victim nor the offender is Aboriginal.

Data source: Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2007 (2007)* Chapter 3, 100.

suffering is just too strong for the nation to ignore anymore. Strategies to ensure that Aboriginal people no longer endure cultural contexts where violence is normal just have to be implemented. At the same time, the high status of Aboriginal 'authenticity' and a plethora of other mainstream resistances to cultural intervention compromise the necessary level of national commitment to adequately challenge traditional community norms of violence. As Sutton says, '[t]his need for change is not all one-sided ...'²²⁴ But the nation's thinkers and policymakers have been baulking at the task.

Mainstream geographic contexts provide some buffer or amelioration from the culture of violence. This is reflected in lower violence and homicide statistics among urban Aboriginal people compared with remote communities. However, geographic proximity is not enough, given the powerful self-determination policy precepts that encourage segregation and distinct identity even in mainstream settings. There are many opportunities for segregation in mainstream towns and cities: separate community centres, health centres, women's centres, pre-school centres, employment programmes, education programmes, housing programmes, recreation facilities, sporting facilities, and so on. The result is that violence in urban locations is significantly higher among Aboriginal residents compared with white residents.

The regional centre of Viewtown typifies this segregation. Within these separate urban places, one can get a sense of the different meaning that violence has from mainstream norms. Even in the setting of the women's centre, talk of the weekend's violence seemed to delight, confirming it as a shared community norm. Not only did mainstream norms have less opportunity to impact, but it set me wondering whether part of the desire to segregate was indeed to get some respite from the annoying low tolerance that whites had for violence. An Aboriginal cabaret I

attended in Viewtown is a sad indication of this possibility.

We had a conversation with one of the women, 'Serena'. She appeared to be fairly young, late 20s probably. She looked unwell, had several teeth missing, and was moderately drunk. After introducing ourselves, she immediately started to tell us about her considerable relationship woes:

I'm so angry with my de facto, taking off for a day without telling me. I'm starting to think he might be up north being lover-boy to other women. I had no inkling that this was about to happen because last night he was in bed with me as usual. I just woke up this morning and he was gone. If he comes back tomorrow or later, he'll be greeted with his bags all packed and me telling him that he has to go, that he can't live in my house anymore. I can do that because the house is in my name! I pay the rent on the house! I'm sick of him and I'm not putting up with him any more. I've been drinking and sleeping and drinking all day, because getting drunk helps drain, block out, all the painful feelings.

Serena asked me for a cigarette, but I had none, and she had no money. So she set off to find someone who could. Serena acquired a cigarette, and she was pretty pleased about this, puffing away happily. Then a young man at our table, here with a partner, stated that he wanted some of Serena's cigarette. Serena refused, so he got very angry and insistent. Foul threatening language and aggressive physical gestures flew across the table between him and Serena.

Then an older woman from another table, 'Miranda', came over to join in, and took the man's side. The man decided to leave, and grabbed his girlfriend, (who has been very quiet all through this) roughly by her long hair, and pulled her by her hair up from the table. She then meekly 'followed' him, while by the hair, he 'led' her to the exit door, her head thrust back in a seem-

ingly uncomfortable position because of this hair-pulling. And all the way he and Serena continued to hurl verbal abuse and aggressive sexual hand gestures at each other very publicly across the width of the cabaret hall.

But Miranda and Serena had not finished with each other, and they dared each other to a fight, so they both got up to have a physical tussle over the fact that Serena didn't want to give the man a bit of her bludged cigarette. I was nervous, and both Joanna and I shifted away from this table and headed back to tables on other side of the dance floor.

For safety, we decided to sit at the table where the Aboriginal elites—elders and professionals—were sitting. It seemed orderly there, with one of the women elders a particularly soothing presence. It is 11.30 pm, only half an hour before our taxi was due. The time was still early, however, and I noticed that already there appeared to be no bouncer present anymore. No bouncer went to deal with the 'cigarette' dispute between the man and the two women. Indeed, the bouncer who came to Joanna's rescue had gone home, and there appeared to be no other men in any state to be a bouncer, with even all the professional men getting very drunk or fractious by now.

Very soon, the 'elite table' was disrupted, with a couple smouldering into a jealousy-based skirmish. Two men from another table ask a woman—a human service professional by day—from this 'elite table' to dance, and she agreed. While she seemed to be sober, I saw that her husband—also a human service professional—staring with what looks like deep anger in his eyes at his wife dancing with these two men (this dancing looked pretty harmless to me). When she sat down, he came over to her table and he started shouting at her for dancing with the men, and she started screaming at him for his double-standards, that he has been going around all night talking to women. Their anger increased, and they grabbed each other's collars and started shaking each other, screaming ever

louder. He then stormed off in a drunken rage out of the club into the car park. I thought to myself: 'so much for the cabaret's self-managed safety system: there seems to be no-one left to apply it now!' We shifted our table three times to get safety, and now there was nowhere to go.²²⁵

CHANGING THE CULTURE OF VIOLENCE IS JUST TOO HARD, BUT IT MUST BE CHANGED

In his review of David McKnight's two recent studies of Mornington Island, *From Hunting to Drinking*, and *Of Marriage, Sorcery and Violence*, James Franklin pointed out that focusing on post-contact causes falls short even as an explanation, leave alone as a basis for strategy:

The facts of violence are clear but the causes and cure are not. Or rather, some of the causes are clear enough but the full story of why things are so bad remains baffling. Obviously alcohol and welfare dependency are important parts of the causes, but those factors are operative in many communities, white and black, and it is far from clear why the effects in remote communities are so far beyond anything found elsewhere, in their extreme levels of violence, ill-health and atrocious education.²²⁶

There are some harsh realities here. For the past two decades of serious concern about Aboriginal domestic violence, the idea that violence was not a part of Aboriginal tradition has allowed policy rhetoric about Aboriginal violence to appear relatively non-threatening to Aboriginal traditional culture and power structures. In particular, the palatability of programmes to address Aboriginal violence were enhanced by emphasis on the white invasion as primary cause. While this has provided scope for progress here and there, overall this approach has not worked because the premise is wrong. Change has to occur on the much deeper level of traditional beliefs,

laws, tolerances and measures of ‘normality’. Christopher Hitchens’ comment about why slavery in the United States took so long to overthrow offers a useful analogy here:

[t]he chance that someone’s religious belief would cause him or her to uphold slavery and racism was statistically extremely *high*, and the latter fact helps us to understand why the victory of simple justice took so long to bring about.²²⁷

Similarly, while there are contemporary causes of violence within remote, traditional communities, the prevailing traditional toleration of violence as a normal and useful phenomenon ‘helps us to understand why’ violence has such a tenacious, unyielding hold over remote Aboriginal communities, and why its reduction is taking ‘so long to bring about’ even when it is so clearly destroying Aboriginal lives.

Perspectives on the role of resilient traditional violence norms, as opposed to reactionary violence due to contemporary factors, have critical implications regarding future strategies for Aboriginal social and economic malaise. There remains a readiness to say that violence was not part of culture. There is still a commitment to self-determined, *in situ* solutions. Above all, a generalised playing down of traditional violence norms as causal in today’s high violence rates in remote Australia leads to *in situ* solutions that are over-optimistic, based as they are on the self-determination idea that Aboriginal people can generate their own solutions, which clearly most have shown that they cannot.

Some *in situ* solutions recognise this inability for internal change, but attempts to impose change upon remote communities with distinct cultural differences from the mainstream can be experienced as too invasive and authoritarian to be acceptable in the long term. Perhaps the Intervention has these drawbacks, whatever its important successes in the short term.

To overcome the chronic violence in the communities, we must overcome resistance to acknowledging that profound cultural change is needed. In terms of effective policies and responses, we probably do not yet have an understanding of what this entails, and we are probably not yet ready to fully face up to and deal with this reality. In the words of anthropologist Peter Sutton:

The problem ... is that the kind of deep cultural changes that may assist a real move out of profound indigenous disadvantage are not well understood, not just in official policy-making circles, but more generally, and in my own grasp of the situation as much as anyone else’s.²²⁸

No doubt, it is more palatable to confront non-cultural factors. They are also probably more amenable to mainstream strategies or influences. However, avoiding the need to confront pre-contact, deep-seated, cultural norms and beliefs is the root cause of the chronic failure to reduce the scourge of violence and despair in the communities.

Breaching Writers’ Limits

While it is unfair to expect writers to define precise policy and strategy responses, it is fair to expect that writers point to broad policy implications of their analysis. Even among those who have bravely written of the traditional roots of today’s violence, including Joan Kimm and Louis Nowra, there is a reluctance to suggest changes that fall outside the present tenets of community self-determination. Their writing leaves one with the sense that it is so important that Aboriginal people are in charge of changes, that it is better to fail than breach the limits of self-determination.

There is much to be agreed with in the concluding chapter of Nowra’s book *Bad Dreaming*,²²⁹ where he gets close to the idea that integration is necessary to end male violence against women. However,

he evades recommending this as policy. Instead, he advocates *in situ* interventions such as the end to lighter sentences for Aboriginal perpetrators, improved health, child protection, and education services, more policing, more women's shelters, better protection of whistle blowers, and the end of the permit system. He also urges violent men in indigenous communities to change, assuming that violent men in the communities can be taught 'that their behaviour towards women is wrong, just as is happening in non-indigenous Australia'²³⁰ and that they can be persuaded to take responsibility for their own deep cultural and behavioural changes. Nowra concludes his book:

Indigenous communities have to recognise that they are part of Australian society and integrate into their cultural sensibility the idea of personal and individual responsibility for their actions. Furthermore, they need to accept that certain aspects of their culture—such as promised marriages, polygamy, violence towards women and male aggression—are best forgotten. There has to be an acknowledgement by the men that women have human rights and that murder and violence are to be judged not by their standards but by the standards of the general community. If men refuse to do anything then they are responsible for the slow death of the many wonderful aspects of their culture, traditions and customs, and their communities will continue to be on a nightmarish treadmill to cultural oblivion.²³¹

This is an apt, moving, exemplary plea, and one hesitates to challenge it, but Nowra's conclusion is predicated on two challengeable ideas: first, that Aboriginal men in remote communities primarily want to be part of mainstream Australia; and second, that remote communities will respond to persuasion to

view violence as unwanted behaviour when it has been, and remains, an integral aspect of traditional life, values and belief.

***A night patrol vehicle
'... was confiscated
by police when
men were caught
smuggling grog'***

Can Aboriginal communities change to more mainstream norms and practices in remote, more traditional contexts, where violence has been tolerated as normal, customary activity and as a means to enforce power for thousands of years? Can

they change when mainstream impacts are deliberately limited in the form of self-determination, permit systems, and the brutal silencing of whistleblowers? If so, how?

Who says that these norms should change? Certainly many Aboriginal people do, particularly those leading more mainstream lives, and those in communities whose tolerance for subjection to violence is perhaps less than in pre-contact times when there was no escape and no alternative perspective or way of life. However, are these Aboriginal people's calls and campaigns for change strong enough to counter resilient cultural norms steeped in fear, and male and elder entitlement? And how do we counteract the misleading and confusing idea that violence is 'not part of our culture' when it very much is, thereby protecting the culture from direct challenge, and keeping interventions focused on exacerbators such as alcohol, drugs, and petrol-sniffing?

Nowra argues that Aboriginal communities need to integrate 'the idea of personal and individual responsibility for their actions'; and that promised marriages, polygamy, violence towards women and male aggression are 'best forgotten'. Yes, but is that little more than rephrasing the problem 'they don't have mainstream norms' as a decree 'they should have mainstream norms'? As discussed already, the scope for making such a choice within the

traditional community is limited. Hence, the necessary outside interventions suggested by Nowra need to occur to secure women's and children's safety. But is that what we want for Aboriginal communities: remote places where the main machinery of servicing the community becomes controlled by outside authorities, focused intensely, 'zero tolerance', on supervising every family every day and every night, to make sure another woman is not killed, another child is not abused, another young man does not suicide, and where a key instrument of success is the presence of a women's shelter?

In her book *A Fatal Conjunction* (2004), Joan Kimm also presents comprehensive documentation and analysis of pre-contact, traditional origins of violence against women. She laments in her concluding chapter that '[t]he continuing public denial that violence is part of traditional culture remains a large part of the "root of the problem"'. Kimm has identified this denial in the influential Gordon Report into family violence which 'based its findings on this hypothesis', despite evidence presented by communities themselves to the Gordon Report that violence against women was part of traditional culture.²³² Kimm also urges the need in law and sentencing to place women's rights above cultural rights.

However, the powerful implications of Kimm's book—that addressing Aboriginal violence requires strategies that tackle its traditional, cultural roots—are circumvented in this last chapter by her priority to uphold self-determined strategies. Kimm invites us to stay within the world of the often-failed tenets of community self-determination, in particular community consultation, community initiatives, and community control of programmes. She highlights communities where such tenets are meeting with success, including at Lajamanu²³³ and Ali Curung²³⁴—where significant reductions in violence and other benefits such as increased school enrolments have occurred with

community-controlled programmes under the trial Aboriginal Law and Justice Programs.

There is self-responsibility. Aboriginal people themselves have taken over their own justice system, through the elders, night patrols and the police. Aborigines are exercising their own authority including the application of customary law as part of a community effort. The communities control the programs which include educational and diversionary programs. Women's shelters have been built and reportedly domestic violence cases have decreased from about 30 incidents a month to few. The communities are now more peaceful and attendance at school rose from 48 per cent in 2001 to 60 per cent in 2002.²³⁵

These are significant changes and to the extent that they are true and remain, the communities deserve recognition. However, today, night patrols²³⁶ and safe houses²³⁷ remain required instruments of safety in these communities, with alcohol and gambling still a scourge.²³⁸ Moreover, there have always been some communities with the commitment and human capital to secure progress, whatever the policy regimen, and it is too easy to get diverted, complacent, or even guilty for remaining critical in the face of gains here and there. Too many remote communities remain chronically dysfunctional despite decades of dedicated people working in community-based programmes and consultation, including Aboriginal women's input.

Above all, investigation a few years later in 2007 by *The Age* journalist Russell Skelton paints a very different picture indeed of Ali Curung from Kimm's portrayal.²³⁹ When Rex Wild and his team made a two-hour visit, it was tea and biscuits and assurances from the men that 'child abuse was not a problem, and faced with silence from the women, the team left'. Skelton continues,

The visit by the author of the Landmark Little Children are Sacred report into sex abuse of

Aboriginal children in the Northern Territory dismayed some of those present who had been fighting a losing battle to contain a generation of violent young men. In Ali Curung, followers of gangsta rap have imposed a mindless culture of terror on women, the elderly and children.

When the Federal Government's team of soldiers, federal police and social workers visits the community next week to assess infrastructure needs, violence and abuse, NT officials hope they will stay long enough to penetrate the silence and denials. One person they won't be able to interview is the woman who supervised the woman's shelter, a small, vulnerable building surrounded by a cyclone fence and located next to the police station.

The Age believes that she abruptly left last week after two years working in the 'Ali Curung war zone'. She told colleagues before she left that it was not uncommon for the safe house, staffed by local women, to be attacked at night by men attempting to extract revenge on the women who fled there. She described how they would scale the rear fence, bash on the door, demand entry and threaten reprisals.²⁴⁰

The article goes on to paint a typical, bleak picture of community life, high levels of sexually transmitted disease, a football carnival that descended into a brawl involving 'several hundred people going at each other with nulla-nullas, axes and rocks'. Perhaps most directly related to Kimm's observations, anthropologist Jenny Walker said that the older women of Ali Curung did make some progress in containing violence with a night patrol vehicle, but 'the change was short-lived when the men commandeered the vehicle, which was in turn confiscated by police when men were caught smuggling grog'.²⁴¹

The Ngaanyatjarra Ptjantjatjarra Yankunytjatjara Women's Council (NPYWC) of Central Australia, which Kimm also points to in a positive context, is another sad example. Joan Kimm emphasises the need to ensure that

Aboriginal women themselves determine their own responses. She argues that neither non-Aboriginal government bureaucracies, nor intra-community male-dominated Aboriginal councils are able to encompass this need for Aboriginal women. She posits 'Noel Pearson's concept of an inter-regional response by Aboriginal women' as 'the chance for strength and independence'²⁴² and points to a few such key initiatives already in place including the NPYWC.

Since the late 1980s women have initiated a number of community projects to deal with sexual assault and domestic violence. Achievements have been the establishment of refuges, increased awareness of legal remedies, provision of counselling, referral services and often some kind of liaison with police. The range of these Australia-wide initiatives is impressive; for example the Women Out West (WOW) in Wilcannia, the Ngaanyatjarra Ptjantjatjarra Yankunytjatjara Women's Council of Central Australia, meetings of Western Australian Women at Balgo to organise night patrols and community centres.²⁴³

The NPYWC was established in 1980, and it has long been a noteworthy, celebrated, and hard-working institution, providing scope for more women's input into community decisions and government reports on a wide range of community issues, including child protection and domestic violence across the vast NPY Western Desert lands. These Lands cover 350,000 sq. kms, crossing into the Northern Territory, South Australia and Western Australia. The total population is about 6,000, and includes a number of towns and dozens of homelands.²⁴⁴ As written in their own 10-year celebratory book, the NPYWC has enabled NPY women to 'speak as forceful, confident persons who back their words with action'.²⁴⁵

Jane Lloyd's figures compiled for the Australian Crime Commission indicate that 28 years after its establishment, the violence figures

for the NPY lands remain catastrophic.²⁴⁶ The violence profile of the domestic homicide violence figures from central Australia is a clear indication that women's initiatives and other responses are not working. Between 2000 and 2008, 14 (probably 16—with two missing, presumed killed) women on these lands were killed by their husband or boyfriend. Six of the homicides occurred between May 2007 and November 2008, meaning that a woman was killed by her partner every three months. Women from the NPY regions are '67 times more likely to be a domestic violence related homicide victim'.²⁴⁷ Lloyd's report indicates the deliberate nature of these homicides, including 'injuries deliberate head, face and torso'; 'multiple episodes of trauma'; 'injuries are inflicted in isolated places'; and 'offender delayed seeking help or medical attention for victim in all cases'. Victims, fearing the risk, sought 'direct help from outside authorities in 9 of the 16 cases'. Perhaps the most telling information is found under Lloyd's heading 'Externalisation of blame and normalisation of violence' with its following list,

- Offender blamed victim for the violence
- Outside authorities blamed the woman for their death
- Family, community, and outside authorities fear the retribution if they report
- Offender deliberately downplayed the injuries and did not express remorse
- Witnesses, including family and those non-related did not report or seek help for the victim.²⁴⁸

Such outsider betrayal of these victims is unforgivable, but what is happening here? Clearly, even outside authorities are not resilient enough to defend victims when a traditional context predominates. How much harder it must be for the women of the community. The fault lies with commentators and governments for expecting too much from such troubled communities that are steeped in the tradition that male violence is a right. Failure and disappointment is just

about inevitable. Moreover, to promote such initiatives as the NPYWC into key solutions traps us within orthodox thought, thereby sapping the crucial energy needed to embark on essential but more difficult strategies.

Part of the attraction of strategies such as the NPYWC where community women themselves initiate and control processes is that they fit within 'empowerment' ideology. Surely this would empower women, and so reduce their vulnerability to violence. Surely outside intervention reduces minority women's voice and power, the opposite of what our goals are.

Sadly, this equation can fail. Too often, the women themselves share in the victim-blaming against other women. Too often as well, the women themselves are violent, including with each other. Even among Aboriginal women in urban areas, including tertiary-educated professionals, such victim-blaming and defence of male perpetrators can remain a prohibitive force, much to the frustration of policymakers and service providers who must grapple with the policy commitment to Aboriginalisation of services, even if it might compromise victim safety.²⁴⁹ Kimm's commitment to self-determined strategies pulls her short of exploring questions regarding what it means to give choice and voice to women victims in communities where violence is seen even by the women as part of culture, a tolerable normality, and where silence reins because to speak out is just too dangerous. The vital questions are: how do we best empower Aboriginal women *victims*? Or better, how do we end the high rate of Aboriginal women's victimisation to violence, when a key problem is that too many of the women themselves possess *the violence of the culture*?

Furthermore, staying within the self-determination framework, even in cases of promising results, can involve the tacit condoning of culturally-embedded behaviours

that by mainstream standards are disturbing and dysfunctional. An example of this is the Indigenous Family Violence Offender pilot programme at Nguuu.²⁵⁰ The reason victims were less afraid of attracting blame was because offenders were less likely to go to jail and could remain in the community. Another claimed reason for the success of the programme is its process.

The commitment of the Nguuu facilitators, ACCO, and community to address family violence in their community has been integral to the success of the program. The facilitators are from 4 different skin groups which allows for diversity when dealing with cultural issues such as *avoidance relationships*. *If a facilitator is not allowed to directly address an offender* then one of the other facilitators will do this (emphasis added).²⁵¹

Avoidance as described is disturbing enough. The possibility at least in some communities of invoking violence when avoidance is breached makes it more disturbing. Furthermore, avoidance relationships can mean that a witness cannot give evidence against a defendant if they have an avoidance relationship with that defendant, or may even deny what they saw, with serious judicial consequences. In one case of a young witness in an assault case, 'Her evidence was she didn't see the defendant assault Ms Ngalmi although she saw the whole incident'. The Court Interpreter advised the Court that the witness 'could not give evidence as there was an avoidance relationship between herself and the defendant'.²⁵² Regarding the impact of avoidance on court cases, Jenny Blokland CM writes,

It is unlikely to be a matter that can be dealt with simply by the usual vulnerable witness procedures ... Despite significant energy and expertise being devoted to Indigenous People in the Criminal Justice System in both the "Little Children are Sacred" report (2007) and a legislative response in the *Northern Territory National Emergency Response Bill 2007* (CW),

no strategy has been developed as far as I am aware to solving or mitigating this problem. The inability of witnesses to give evidence because of cultural constraints serves neither party nor the community well.²⁵³

Despite the power of the rest of Kimm's book, one is left with the sense that while we can secure some reductions here and there, community violence at higher than the mainstream rate is inevitable, and Aboriginal women's empowerment is about community women themselves running the sadly necessary community women's shelters and night patrols and legal centres to secure some safety. More is needed than such insistence on limiting ourselves to small signs of hope within the self-determination stricture. There is no breakthrough here and it sounds little better than surrender. Is this the best we can do as a nation for the Aboriginal people of remote Australia? And in reference to choice and voice, what about the children?

With its goal-orientated rather than ideologically-restricted approach, the Intervention may offer a more effective approach. Let's hope so, but as already alluded to, surely such heavy intrusion into people's everyday lives to maintain their safety and health is not the long-term solution we are looking for.

Searching for Answers: Beyond Self-determination, Beyond Intervention

In the case of Aborigines, there is a price to pay for an alleviation of ... despair; a change in behaviour. But changing behaviour—in other words, becoming less 'cultural' and less 'authentic' as an Aboriginal—has until recently been ruled out of the policy lexicon.²⁵⁴

The cultural norm of violence contributes to the reduced life chances of too many Aboriginal people, particularly those living more traditional lifestyles on remote communities, but even for many Aboriginal people living in Australia's cities. In pre-contact times there was no alternative, no escape from this violence,

either geographically or existentially. This lack of escape, lack of choice, lack of other horizons, probably offered some protection to individual psyches, as no other options probably meant less self-blame, less frustration and less despair. Notwithstanding this, from pre-contact times the severe stress women experienced under more restrictive, 'impossible-to-comply-with' rules, and their subjection to brutal misogynist violence seems to have wielded a heavy toll on women's psychological as well as physical well-being. Overall though, it seems reasonable to postulate more homicide and less suicide in pre-contact Australia than among today's Aboriginal people, including those in remote traditional communities.

Aboriginal violence involves the most vulnerable of victims, and as a nation we are obliged to provide for them the highest quality, most committed professionals irrespective of their race, who utilise approaches and programmes of proven effectiveness. Such dedicated professionals and promising programmes already operate, and no doubt the situation would be worse if they were not in place, particularly on the level of help for individual victims and perpetrators.

However with horrific violence figures continuing unabated, it is clear that high quality domestic violence programmes are rarely enough when the violence is a cultural norm that grips whole communities. Today, many Aboriginal people want a violence-free community. So why is it not happening? There is a slip between wanting something and being able to accomplish it; and between wanting something, and wanting it more than the things that have to be given up before you can have it.²⁵⁵ Can wanting no violence be enough

when you are living in and participating in a *norm* of violence, so that you believe in a right to be violent when somebody 'acts up' or doesn't obey, so that you believe that someone deserves to be beaten, so that you don't perceive violence as aberrant behaviour?

Within traditional Aboriginal culture, there is significant scope for individuals to engage in legitimised violence. At the same time, successful participation within mainstream Australia requires a high level of restraint

against violence in everyday life. Aboriginal people who lead positive lives within mainstream Australia and shun violence have derived this norm either from non-Aboriginal people or from other Aboriginal people who have adopted mainstream norms concerning violence. However, the whole self-determination project is predicated on the idea of tempering mainstream cultural influence and interchange, while enhancing the derivation of one's cultural norms and practice from traditional sources.

We should not be surprised at the result. What we have done is inhibited many Aboriginal people's acquisition of norms

vital for the contemporary world. With the structures of self-determination, we have enabled the dysfunctional norm of violence and associated atavistic power relations to continue, intensified further by discrete geographic, 'closed community' contexts. At the same time, many of mainstream's advantages are known and desired by remote communities, but beyond reach. This results in frustration and feelings of inadequacy, particularly among young people, while also disestablishing the once deep spirituality of traditional culture

Policies and programs that have encouraged Aboriginal people to stay on remote lands and to maintain outdated beliefs and norms, particularly the legitimization of violence, have had very dangerous consequences for Aboriginal people

which, at least in a spiritual sense, made some sense of the harsh exacting rules and, when broken, the violent consequences.

Aboriginal culture has always been dangerously violent. Any lost spiritual sense that this violence once had is difficult to restore. Attempts at such restoration run the risk of making matters worse, because it could further justify the wielding of violence by the powerful and further the victimisation of the vulnerable. While the contemporary, mainstream world's beckoning is irresistible, such restoration attempts could result in more despair and more suicide, and render communities even more incapable of successful adjustment to mainstream demands.

The geographic context is starting to change. While this is in a direction with more scope for positive participation in mainstream society, this is not at all assured unless much more is attended to. As identified and analysed by Gary Johns in his recent paper, *No Job No House, An Economically Strategic Approach to Remote Aboriginal Housing*, the policy-encouraged population drift to homelands over the last three decades is starting to reverse, with migration to major population centres. This is happening particularly among young people who are starting to abandon the homelands, in search for better education and employment opportunities in cities and regional centres, and to escape from the appalling social conditions including violence that beset remote and very remote communities at much greater levels than among Aboriginal people living in cities and regional centres.²⁵⁶ Johns has also pointed to signs that 'physical consolidation' of Aboriginal communities is being encouraged by governments, for instance with provision of services in the Northern Territory to be concentrated on communities with at least 100 people, and housing on an even smaller number of communities.²⁵⁷

While larger discrete Aboriginal population centres may provide scope for more efficient

service provision and intervention programmes, it is unlikely that they will provide these populations with sufficient contact with mainstream mores to adequately reduce norms of violence, even if good housing, employment, education, law enforcement and other services are available and permit systems abandoned. Indeed, larger Aboriginal population centres can also be very dangerous places. Wadeye is a sad example of this.

Paul Toohey's article, *A New Lease on Life*,²⁵⁸ provides an optimistic vision that Aboriginal communities will in the future be transformed into pleasant towns with thriving businesses: long-term land leases, the end to the permit system, and opening them up to market forces being key transformative measures. However, even if they can be economically viable, violence will not automatically decline to mainstream levels. Attention to issues of culture and integration will still need direct attention if violence is to be addressed. Aboriginal communities within mainstream regional centres and cities can also live surprisingly separate lives within the same geographic space, encouraged by the precepts of self-determination, enhancing the chance for different cultural norms to continue, and delaying adjustment to mainstream norms. While violence rates among Aboriginal people living in mainstream regional centres and cities are lower than among remote Aboriginal centres, they remain higher than among their non-Aboriginal neighbours.²⁵⁹ This is a major cause of fear and distancing from Aboriginal residents among non-Aboriginal people, further reducing the chances of successful Aboriginal integration.

While powerful Aboriginal people have helped give rise to the self-determination context that has proved so harmful, it is ultimately not Aboriginal people who are to blame. It is Australia's governments and policymakers. Aboriginal people suffering either in the communities or in the cities are usually not in a position to initiate and undertake the

necessary changes, as generally speaking they are too immersed in the dysfunctional culture themselves to see the need adequately, or they lack the strength and skills necessary, for the required changes. It is cruel and unfair to expect that from the communities, and then to blame and punish them for inevitable failure. The upshot is that self-determination has achieved just that: failure, blame, and the punishment of unrelenting ill-health, violence, suicide, community break-down, unemployability, imprisonment, and poorly educated, neglected children.

With assistance from key Aboriginal and non-Aboriginal people with treasured insight, commitment, and courage, Australia's governments have a duty to identify and then provide the societal contexts that most effectively move Aboriginal people away from the hitherto resilient traditional culture of violence. An essential feature of such contexts is that they maximise Aboriginal people's immersion and participation within mainstream culture, and minimise wishes and opportunities for segregation. For this to happen, policies now required are those that nurture the opposite of what self-determination has encouraged. That is, policies now need to encourage geographic co-location with non-Aboriginal populations, and non-segregated participation within the public life of mainstream society in terms of service provision, housing, education, employment and recreation.

Of course such change in policy direction must be undertaken with compassion and sensitivity. Also, regional centres themselves need support to respond positively to this influx of needy people. In particular, an increase in racial tension is a real possibility because of difficult cultural differences, including the higher violence norms that too many new arrivals from remote areas are likely to bring with them. As Johns points out, Australia's internal flight from remote and very remote centres to mainstream regional

locations and cities is already occurring, and these are vulnerable *refugee* populations that are under-equipped to adjust to mainstream life without significant assistance.²⁶⁰ Indeed for the future well-being of Aboriginal people leaving communities, assistance must not run counter to adjustment to the mainstream—the tendency of self-determination even in the cities—and challenging embedded cultural norms requires programmes that 'respond to' but do not 'promote' cultural difference.

This adjustment to the mainstream process is not about taking anything from Aboriginal people, but about equipping them for full participation in contemporary Australia and all its health, educational and economic benefits, as is their right as citizens. Aboriginal land won back after years of hard political struggle, are precious ancestral lands including to Aboriginal people living mainstream lives in the cities. It is the living apart from mainstream Australia on these distant lands that is the problem. What is clear now is that policies and programmes that have encouraged Aboriginal people to stay on remote lands and to maintain outdated beliefs and norms, particularly the legitimisation of violence, have had very dangerous consequences for Aboriginal people's mental, physical and economic well-being and capacity to cope with the unavoidable demands of the contemporary world.²⁶¹

We need policies and programmes that encourage the reverse. There are already promising models that we can draw upon for ideas and inspiration. The Aboriginal-sponsored migration programme of the 1970s²⁶², and the wealth of experience that Australia has in breaking down barriers to disadvantaged people's full participation come to mind. Steve Etherington provides an insightful and compassionate approach, with its emphasis on non-compulsion and equipping Aboriginal people for mainstream jobs in urban centres, plus the encouragement of nearby safe and effective housing schemes.²⁶³

The Australian Employment Covenant for Indigenous People, with its focus on training thousands of Aboriginal people and then providing them with mainstream jobs with mentor support is a welcome new model. Covenant team member Wesley Aird said that 'there is a tremendous amount of corporate goodwill' to provide these promised jobs, despite the global economic crisis.²⁶⁴ There is also much goodwill in the suburbs of mainstream Australia waiting to be tapped. My field work experience found that white residents resent the plethora of items that keep them separate from their Aboriginal neighbours: Whites want *mixed* schools, clubs and services: hardly a racist position! Above all, ending Aboriginal exclusion from mainstream culture is the only effective broad-scale strategy for the acquisition of strong norms against violence. It is therefore critical that governments encourage integration if we are to have confidence that Aboriginal Australia is moving towards a culture of restraint, and that we as a nation are moving away from condemning Aboriginal people to the dangerous traditional norms of violence that limit too many Aboriginal people's life chances within contemporary Australia.

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ABOUT THE AUTHOR

Stephanie Jarrett developed her interest in Aboriginal women's issues in the early 1990s after seeing the David Bradbury movie, *State of Shock*, a true account of the tragic life events leading up to an Aboriginal man killing his wife in a drunken, violent attack. The audience was invited to adopt a sympathetic stance towards the perpetrator, and her first response was one of sympathy for him. However, an Aboriginal woman who also saw the film exclaimed to her, 'What about the woman? She's dead now. He killed her!' Stephanie's PhD was a critical assessment of Government policy responses to Aboriginal domestic violence. Research for this thesis included a year of field work, during which time primary research was undertaken, with input from a wide range of Aboriginal and non-Aboriginal residents, service providers, and policy makers.

Since her PhD, Stephanie has participated in a wide range of research projects, including reports into the education training needs of the public sector with the SA Public Administration Industry Training Advisory Body, local government community planning reports, and with the Flinders University, research into the needs of disadvantaged families with young children with *The Families With Young Children Project*. As field worker team leader for this project, Stephanie organised and participated in the recruitment and interviewing of 500 Adelaide families living in disadvantaged suburbs, and presented a paper to the Bennelong Society based on her quantitative analysis regarding the 65 families with Aboriginal children who participated in this project. Stephanie has teaching experience with Aboriginal students in the tertiary sector, particularly as a tutor assisting individual students with key essay writing and research skills. She has a sustained interest in Aboriginal policy, in particular, policy responses to Aboriginal domestic violence.

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 42. Rosemary Wanganeen, 2009, Spiritual Healer, and Adjunct Research Fellow of the University of South Australia, speaking on 'Profile: Rosemary Wanganeen', *Bush Telegraph*, ABC Radio National March 9 2009.
 43. Aboriginal and Torres Strait Islander Justice Commissioner, 2006. *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities* Report, HREOC, Sydney, 'Key challenge 7', reproduced in Calma 2007, 20.
 44. Debra White of Casuarina Community Corrections, and Melissa and Gilbert Alimankinni, Facilitators at Nguuu, 2006. *Indigenous Family Violence Offender Program: The Nguuu Experience*, September 2006, 1. Available at: <http://sitebuilder.yodelaustralia.com.au/sites/5530/Debra%20White.doc>
 45. Kirby, M. 1983. 'Should we recognise Aboriginal tribal laws?' in his *Reform the Law: Essays on the renewal of the Australian Legal System*, Oxford University Press, Oxford, 126.
 46. Hughes, 2007, 29–30.
 47. Nowra, N. 2007. *Bad Dreaming: Aboriginal Men's violence against women and children*, Pluto Press Australia, North Melbourne, 61.
 48. Author's interview with service provider, 1990s.
 49. For example, Kimm, 2004, final chapter. See also Johns, 2008, 70, where he writes: 'To characterise the respective interventions, the first risks saving the culture and losing the child (NT Government and

- self-determination) and the second risks saving the child and losing the culture (Howard Government and integration). Unfortunately, to lose the child is also to lose the culture. While this characterisation may be too stark and is no doubt oversimplified, the trade-off it implies proves too hard for most governments.’ Available at: <http://epress.anu.edu.au/agenda./015/02/pdf/15-2-CO-1.pdf>
50. Etherington, 2007, has important insights on non-Aboriginal liberalist sentimental, spiritual need to idealise remote Aboriginal Australia, and the associated idea that ‘Aboriginal people should continue to live in their remote Aboriginal way’, 5–8.
 51. O. Noonuccal, extract from poem *The Dispossessed*. Full poem in Robertson, B. Chairperson, 2000. *The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report*, The State of Queensland, March 2000, 1. See also page 109. See also the quote from Rosemary Wanganeen 2009, in this paper.
 52. See Edgerton, R. 1992. *Sick Societies: Challenging the Myth of Primitive Harmony*, The Free Press, New York, Chapter 1 ‘Paradise Lost: the Myth of Primitive Harmony’, 1–15.
 53. See Johns, 2008.
 54. For example, Wanganeen, 2009.
 55. Calma, T. 2006. Speech delivered at *Forum on ending violence in Indigenous communities*, Parliament House Canberra, 19 June 2006, reproduced in Calma, *Ending Family Violence* 2006, 27.
 56. For more comprehensive accounts of traditional violence and its continuity, see Kimm 2004 and Nowra 2007. A number of anthropologists and early colonial writers offer first hand, often comprehensive accounts and analyses of Aboriginal pre-contact violence norms and systems: Strehlow, Warner, Tench, and Eyre.
 57. Family Violence Education Taskforce, 1991. *Family Violence: Everybody’s Business Somebody’s Life*, The Federation Press, Sydney, Chapter 6, ‘The Law and Family Violence’, 171. However, Western attitudes to wife-beating, along with the gender power balance within the home, was arguably not one of steady progress, and 18th century London middle-class female victims possibly had more access to help than their counterparts in the 19th century. See Hunt, M. 1992. ‘Wife beating, domesticity and women’s independence in Eighteenth-Century London’, *Gender and History*, Vol. 4, No. 1, Spring 1992, 10–33.
 58. Family Violence Education Taskforce, 1991, 173.
 59. See also Dawkins, 2006, 303–308.
 60. Dawkins, 2006, 268–283.
 61. The use of mild corporal punishment on one’s own children for disciplinary reasons is still legal in many liberal-democracies, although it is under challenge, and is illegal in 24 nations including New Zealand. See http://www.endcorporalpunishment.org/pages/progress/prohib_states.html
 62. Kimm, 2004, 55.
 63. Author’s fieldwork, 1990s. Real names of towns are disguised for confidentiality purposes.
 64. Burbank, 1994, 31.
 65. See Law Reform Commission of Western Australia (LRCWA). 2006. ‘Traditional Aboriginal Law and Punishment’, *Aboriginal Customary Laws Discussion Paper, Part V—Aboriginal Customary Law and the Criminal Justice System*, 84. Available at: http://www.lrc.justice.wa.gov.au/2publications/reports/ACL/DP/Part_05B.pdf
 66. Burbank, 1994, 31.
 67. See McKnight, 2005, 135. Another example is the story of Ngurunderi, a Ngarrindjeri a creation story depicting a Dreamtime world that includes female food taboos, frightened women and an angry, violent, grieving male creator who, mourning his wives that he caused to drown, commits suicide. See ‘Ngurunderi’ in Education Department of South Australia, 1990. *The Ngarrindjeri people: Aboriginal people of the River Murray, the Lakes and the Coorong: an Aboriginal Studies course for secondary students in years 8–10*, 50–53.
 68. see LRCWA, 2006, 87–8.
 69. My emphasis.
 70. Edgerton, 1992, 202.
 71. Edgerton, 1992, especially Chapter 3, ‘Maladaptation’, 46–74.
 72. Edgerton, 1992, 53.
 73. Edgerton, 1992, 103–104.
 74. Edgerton, 1992, 47–52, 126.
 75. Edgerton, 1992, 104.
 76. Edgerton, 1992, 204.
 77. LRCWA, 2006, 84.
 78. LRCWA, 2006, 84.
 79. LRCWA, 2006, 84, referring to Kenneth Maddock, 1984. ‘Aboriginal Customary Law’, in Hanks, P. and Keon-Cohen B., eds., 1984. *Aborigines and*

- the Law, Allen and Unwin, Sydney, 219. See also LRCWA, 2006, ft. 7 on p.84.
80. LRCWA, 2006, 88–9.
 81. This section draws upon the work of T.G.H. Strehlow presented in Strehlow, K. 1991, *The Operation of Fear in Traditional Aboriginal Society in Central Australia*, The Strehlow Research Foundation Inc., Adelaide. In the passages referred to in this paper, Kathleen Strehlow quotes from the following works by T.G.H Strehlow.
 - Strehlow, T.G.H. 1969. *Journey to Horseshoe Bend*, Angus and Robertson, Sydney.
 - Strehlow, T.G.H. 1971. *Songs of Central Australia*, Angus and Robertson, Sydney.
 - Strehlow, T.G.H. 1970. 'Geography and the Totemic Landscape in Central Australia: a Functional Study', in *Australian Aboriginal Anthropology*, University of Western Australia Press.
 - Strehlow, T.G.H. 1978. Pamphlet No. 3, Vol. 1, April 1978. The Strehlow Research Foundation Inc., Adelaide.
 82. Strehlow, T.G.H, in Strehlow, K. 1991. *The Operation of Fear in Traditional Aboriginal Society in Central Australia*, The Strehlow Research Foundation Inc., Adelaide, 7.
 83. Strehlow, T.G.H, in Strehlow, K. 1991, 80
 84. Strehlow, T.G.H, in Strehlow, K. 1991, 80.
 85. Strehlow, K. 1991, 35
 86. See also LRCWA, 2006, 85.
 87. Strehlow, K. 1991, 34–35.
 88. Strehlow, T.G.H, in Strehlow, K. 1991, 5.
 89. 'Even the *tjauerilja*—the gift offerings of meat paid for months (even years, by young male novices who had passed through the "man-making" ceremonies to the old men before these gave them any religious instruction) were sacrosanct', Strehlow, T.G.H, in Strehlow, K. 1991, 7.
 90. Strehlow, T.G.H, in Strehlow, K. 1991, 6–7.
 91. Strehlow, T.G.H. in Strehlow, K. 1991, 9; see also Strehlow, K. 1991, 35–7.
 92. Strehlow, K. 1991, 75.
 93. Strehlow, K. 1991, 76–7. T.G.H. Strehlow noted that because of taboos 'against free discussion of serious acts of sacrilege', the exact nature of the accident has not been handed down; Strehlow, T.G.H. in Strehlow, K. 1991, 76, ft 121).
 94. LRCWA, 2006, 84, ft 7.
 95. Strehlow T.G.H. q. by L. Hiatt, 1991, *Aboriginal Political Life*, Australian Institute of Aboriginal Studies, Canberra, 10, q. by Burbank 1994, 31–32.
 96. Strehlow, T.G.H. in Strehlow, K. 1991, 10.
 97. Strehlow, K. 1991, 31.
 98. Strehlow, T.G.H. in Strehlow, K. 1991, 32. For another example, see Berndt, R.M. and C.H., 1981. *The World of the First Australians*, Lansdowne Press, 2nd edition 1981, reprinted 1982, 354).
 99. Strehlow, K. 1991, 74–5; 78.
 100. Strehlow, K. 1991, 74.
 101. Strehlow, K. 1991, 78.
 102. Strehlow, K. 1991, 78.
 103. Warner, W.L. 1958. *A Black Civilisation: a Social Study of an Australian Tribe*, Harper and Brothers Publishers, revised edition 1958, 160.
 104. McKnight 2005, 140.
 105. Tonkinson, R. 1990. 'The changing status of Aboriginal women: "free agents" at Jigalong', in Tonkinson R. and Howard, M. 1990. *Going it Alone: Prospects for Aboriginal Autonomy, Essays in Honor of Ronald and Catherine Berndt*, 129.
 106. Bates, D. (ed. by Isobel White, 1985). *The Native Tribes of Western Australia (1901–1914)*, National Library of Australia, Canberra, 124.
 107. Berndt and Berndt 1981, 305. There was also 'beneficent magic' such as rain making; and 'love magic' practised in various forms throughout traditional Aboriginal Australia: 312–319.
 108. Burbank 1994, 167.
 109. Phyllis Kaberry writes that only a male could cause another to die through sorcery: Kaberry, P. 1939. *Aboriginal Woman Sacred and Profane*, Routledge, London, (this edition 2004) 211–12. (Note, C. Strehlow gives an account of Aranda women's sorcery that was intended to sicken or indeed kill a female rival: Strehlow, C. 1907–1920. *Die Aranda und Loritja Stamme in Zentral Australia*, Joseph Baer, Frankfurt, q. in Strehlow, K. 1991, 27–28.
 110. See Berndt and Berndt 1981, Chapter 9, 'Magic and Sorcery', 304–335.
 111. Berndt and Berndt, 1981, 322–324.
 112. Berndt and Berndt 1981, 320.
 113. Berndt and Berndt 1981, 323–324.
 114. Berndt and Berndt 1981, 305.
 115. Berndt and Berndt 1981, 329.
 116. Berndt and Berndt 1981, 329.

117. Kaberry 1939, 211–212.
118. Eyre, E. J. (1845) 2004. *An account of the manners and customs of the Aborigines and the state of their relations with Europeans*, Ch. 2. eBooks@Adelaide 2004, Available at: http://ebooks.adelaide.edu.au/eyre/edward_john/e98m/complete.html (originally published with 'Journals of expeditions of discovery into Central Australia, and overland from Adelaide to King George's Sound, in the years 1840–1')
119. Kaberry 1939, 212.
120. Berndt and Berndt, 1981, 330.
121. McKnight 2005, 145.
122. McKnight 2005, 153.
123. McKnight 2005, 151.
124. McKnight, 2005, 153
125. McKnight, 2005, 152–3.
126. McKnight, 2005, 209–11.
127. Burbank, 1994, 167.
128. Burbank, 1994, 175.
129. Hughes, 2007, 29.
130. Cribb, R. 2005. Submission to Senate Select Committee, *Indigenous People and Mental Health on Cape York Peninsula*, Individual Submission from Dr. Roger Cribb, sub261, 12th May 2005, 6. Available at: http://www.aph.gov.au/senate/Committee/mentalhealth_ctte/submissions/sub261.pdf
131. Hon. E. P. Mullighan QC, 2008. *Children on Anangu Pitjanjatjara Yankunytjatjara (APY) Lands: Commission of Inquiry: A Report into Sexual Abuse* (Mullighan Inquiry), presented to the South Australian Parliament, April 2008, Part 2, Chapter 3, 49. For confidentiality, the Mullighan Inquiry does not date particular incidents: Part II Child sexual abuse on the Lands, Ch. 3 'Allegations', 40. However, of the 269 sexual abuse allegations investigated, 'Three occurred during the 1980s, 18 occurred during the 1990s and the remainder were reported since the year 2000': Introduction, Summary, xiii. Available at: http://www.service.sa.gov.au/ContentPages/sagovt/mullighaninquiry_apy.aspx
132. Kimm 2004, 90.
133. Kimm 2004, 90. Kimm provides a disturbing example of this on pages 90–1. I encourage others to read it. Note that in this awful case, the ALS successfully dropped charges against the perpetrators of vicious tribal punishment inflicted on the so-called 'guilty' parties.
134. Cowlshaw, G. 1978. 'Infanticide in Aboriginal Australia', *Oceania*, Vol. 48 (4), June 1978, 276. This is presented in this paper with a little more detail below in the section Women's sadness women's protest: infanticide.
135. Kimm, 2004, 53, with references to Burbank 1994, 152–155; and Langton, M. *et al*, 1991, 'Too Much Sorry Business', in Johnston, 1991, Vol. 5 Appendix D 1, 203.
136. Given this death rate of young men, one wonders why there might be slightly fewer women. What is killing the women at a higher rate? Child birth? Violence? And note the mean age of the male population, 16 years: very young.
137. Warner, 1958, 158.
138. Warner, 1958, 159.
139. As mentioned, Eyre reports that the deaths of young or strong people were not regarded as natural: instead, 'they ascribe them to the agency of sorcery, employed by individuals of neighbouring tribes': Eyre, (1845) 2004, Ch. 2.
140. Eyre, (1845) 2004, Ch. 2.
141. Eyre, (1845) 2004, Ch. 2.
142. Eyre's note: Bwirri: 'A short, heavy wooden stick, with a knob at one end': Eyre (1845) 2004, Ch. 2
143. Eyre, (1845) 2004, Ch. 2.
144. See Berndt and Berndt 1981, 303, where they wrote 'The Dreaming was the source of all life, and anything which touched it was, virtually by definition, sacred. Sacredness was, therefore, a condition of living'.
145. Hon. Mr. Justice M.D. Kirby, 1980–1. 'T.G.H. Strehlow and Aboriginal Customary Laws', *The Adelaide Law Review*, Vol. 7, 1980–1, 191–2.
146. Strehlow, T.G.H. 1978. 'Aboriginal Customary Law', *Strehlow Research Foundation Pamphlet* No. 5, Vol. 1, August 1978, 1., q. in Kirby 1980–1, 192.
147. For example by Kimm, 2004, 46; Nowra, 2007, 9–10.
148. Nowra, 2007, 10.
149. Eyre acknowledges M. Moorhouse, Esq., Protector of Aborigines in Adelaide, for his contribution to this account, particularly in relation to the Aboriginal people of the Adelaide Plains: Eyre, (1845) 2004, Ch 1.
150. Eyre, (1845) 2004, Ch 1.
151. Eyre, (1845) 2004, Ch. 4.

152. Kimm, 2004, 68, referring to Kaberry 1939, 100–101 and 103; Hamilton, A. 1978, 'The role of women in Aboriginal marriage arrangements', in Gale, F. (ed), 1978. *Women's Role in Aboriginal Society*, Australian Institute of Aboriginal Studies, Canberra, 34; Lingard, J. 1846 printing? *A Narrative of the Journey to and from New South Wales*, (J. Taylor, Chapel-en-le-Frith, England), 33; and Davis, S. 1994. *Above Capricorn*, Angus and Robertson, Sydney, 30.
153. Kaberry, 1939, q. in Kimm 2004, 97. Eyre wrote that '(i)f a wife be stolen, war is always continued until she is given up, or another female in her place', Eyre (1845) 2004, Ch. 4.
154. Eyre, (1845) 2004, Ch. 4. For a general discussion on female deprivation of food and other misogynist cultural practices globally, see Edgerton 1992, Ch. 4, 'Women and Children First: from Inequality to Exploitation', 75–104.
155. Eyre, (1845) 2004, Ch. 2.
156. Kimm, 2004, 113, referring to Brockman, J.(ed) *He Rode Alone* (Artlook Books, Perth, 1987), 155, 157.
157. Sutton, *Anthropological Forum*, 2001, 152.
158. Kimm, 2004, 46. Regarding 'contemporary observations' Kimm includes Tench's and other 18th and 19th century observations. She notes: 'Evidence of Aboriginal women being controlled by severe violence exists in the earliest written records. From 1788 the British, and later the French maritime explorer de Bougainville, noted head wounds and scars on Aboriginal women, the evidence of the "great cruelty" and "savage barbarity" inflicted by Aboriginal men on Aboriginal women'. Kimm's sources: Phillip, A. in Bach, J. (ed), 1968. *An Historical Journal of Events at Sydney and at Sea*, Angus and Robertson, Sydney, 317, 319, 333; W. Tench, 1961. *Sydney's First Four Years*, Angus and Robertson, Sydney, 276, 290–91; Riviere, M. 1999. *The Governor's Noble Quest: Hyacinthe de Bougainville's account of Port Jackson 1825*, Melbourne University Press, Melbourne; and Sutton *Anthropological Forum*, 2001, 'for references to observations of Tench, 1793, William Collins, 1798, and Edward John Eyre'.
159. See Kimm, 2004, 51–2, and Nowra 2007, 12–18.
160. Brunton, Occasional Paper 2007, 25–26.
161. Brunton, Occasional Paper 2007, 25–26.
162. Cowlshaw, 1978, 263.
163. Cowlshaw, 1978, 263.
164. Eyre, (1845) 2004, Ch. 4.
165. Eyre, (1845) 2004, Ch. 4.
166. Cowlshaw, 1978, 267.
167. Cowlshaw, 1978, 273–281.
168. Cowlshaw, 1978, 281.
169. Cowlshaw, 1978, 276–7.
170. Cowlshaw, 1978, 277.
171. Cowlshaw, 1978, 278.
172. William D. Rubenstein, 2009. 'The Biases of Genocide Studies', *Quadrant online*, Volume LIII, No. 3, March 2009. Available at: <http://www.quadrant.org.au/magazine/issue/2009/3/the-biases-of-genocide-studies>
173. Rubenstein, 2009, referring to Aram A. Yengoyan, 1972, 'Biological and Demographic Components in Aboriginal Australian Socio-Economic Organisation', *Oceania*, 43, 1972, 88.
174. Cribb 2005, 3.
175. G. M. Eames QC, 1993, 'Aboriginal Homicide: Customary Law Defences or Customary Lawyers' Defences?', in Strang, H. and Gerull, S-A eds., 1993, *Homicide: Patterns, Prevention and Control: proceedings of a conference held 12–14 May 1992*, Australian Institute of Criminology (AIC), Canberra, 1993, 150–165. Available at: <http://www.aic.gov.au/publications/proceedings/17/eames.html>
176. Eames, 1993, 154.
177. Eames, 1993, 154–58.
178. Eames, 1993, 153.
179. Eames, 1993, 152–153.
180. Gallop, J. 1980. *R v Gus Forbes*, Northern Territory Supreme Court, Unreported, 29 August 1980, q. in Eames 1993, 154.
181. Eames, 1993, 156.
182. For example, *The Mullighan Inquiry*, 2008.
183. As communicated to the author by a nurse who spent years working in remote communities, 2008–09.
184. Pers. comm. from nurse, 2008–09.
185. Pers. comm. from nurse, 2008–09.
186. Nicolas Rothwell, quoted in Nowra 2007, 67.
187. Personal communication from nurse, 2008.
188. Personal communication from nurse, 2008.
189. Robinson, N. 2008. 'Secrets in the Shadows', *The Weekend Australian Inquirer*, June 21–22 2008, 22.

190. Mullighan, 2008.
191. Mullighan, 2008, Introduction, xiii
192. Mullighan, 2008, xiii
193. Mullighan, 2008, Part IV Prevention and Consequences, Ch. 3 'Education', 211.
194. Mullighan, 2008, Part IV Ch. 3, 211. See also p.196, 'Of particular concern for education professionals was the high proportion of children who arrived at school without food having suffered sexual, physical or emotional abuse'.
195. Mullighan, 2008, Part IV Ch. 3, 211.
196. Mullighan, 2008, Part IV Ch. 3, 201.
197. Mullighan, 2008, Part II Ch. 3, 46.
198. Mullighan, 2008, Part IV Ch. 3, 202.
199. Mullighan, 2008, Part II Ch. 2, 29.
200. Mullighan, 2008, Part II, Chapter 3, 64.
201. Mullighan, 2008, Part II, Chapter 3, 64.
202. Kimm, 2004, 64.
203. Robinson, 2008.
204. Robinson, 2008.
205. Robinson, 2008.
206. Burbank, 1994, 72.
207. Burbank, 1994, 74.
208. Burbank, 1994, 81.
209. McKnight, 2005, xix.
210. McKnight, 2005, 25.
211. McKnight, 2005, 47.
212. McKnight, 2005, 55.
213. McKnight, 2005, 140.
214. McKnight, 2005, 209–211.
215. See Tatz, C. 1999. *Aboriginal suicide is different: Aboriginal youth suicide in New South Wales, the Australian Capital Territory and New Zealand: towards a model of explanation and alleviation*, CRC funded reports, Criminology Research Council, 14 July 1999. In the Executive summary, Colin Tatz writes that suicide was 'a phenomenon virtually unknown in Aboriginal societies until 30 years ago'.
216. Murdoch, L. 2008. 'Hours after Nicky Yunupingu danced for Kevin Rudd, the Yothu Yindi star was dead. A celebratory drink spiralled into a night of violence—and tragedy', *The Age*, July 30, 2008, 1–2.
217. Kimm, 1999, Preface p. iv. There is a similar tract in Kimm, 2004, vii.
218. Personal communication from nurse, 2008.
219. McKnight, D. 2002. *From Hunting to Drinking: The devastating effects of alcohol in an Australian Aboriginal community*, Routledge, London, 225, Note 59.
220. For further reading on the danger of these lands, see Jenness Warin with James Franklin, 2007. *Remote Aboriginal Communities: Why the trade in girls and other human rights abuses remains hidden*, The Bennelong Society Occasional Paper: October 2007. Available at: <http://www.bennelong.com.au/occasional/Warin2007.pdf>
221. Sutton, *Anthropological Forum* 2001, 135–136.
222. Eames, 1993, 152–153. See also Burbank, 1994, 72.
223. Author's field work, 1990s.
224. Sutton, *Anthropological Forum* 2001, 137.
225. Author's field work, 1990s. Names changed to preserve anonymity.
226. J. Franklin, 2008. 'The Cultural Roots of Aboriginal Violence', *Quadrant online*, Vol. LII No. 451, November 2008 Available at: <http://www.quadrant.org.au/magazine/issue/2008/451/the-cultural-roots-of-aboriginal-violence>
227. Hitchens, C. 2007. *God is Not Great: How religion poisons everything*, Twelve (Hachette Book Group USA), New York, 180.
228. Sutton, *Anthropological Forum* 2001, 137.
229. Nowra, 2007, Ch. 7.
230. Nowra, 2007, 91.
231. Nowra, 2007, 92–93.
232. Kimm, 2004, 45, 63, 87, 148, referring to Gordon, S., Hallahan, K., and Henry, D. 2002. *Putting the picture together, Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Dept. of Premier and Cabinet, Western Australia, 2002.
233. Lajamanu Population 2006: 790; classified 'very remote'. Source: Australian Bureau of Statistics, 2008. *National Regional Profile: Lajamanu (CGC) (Local Government Area)*, released 28th July 2008. Available at: <http://abs.gov.au/AUSSTATS> (link to Population for Local Government Area)
234. Ali Curung population: 320–450. Source: Central Land Council, 2008. *Reviewing the Northern Territory Emergency Response: Perspectives from six communities*, 2008, 10. Available at: <http://www.clc.org.au/Media/issues/intervention/CLC%20REPORTweb.pdf> Note: Kimm, 2004, 156, refers to Ali Curung. Usually, the spelling is Ali Curung, but both spellings are used. Formerly it was known as Warrabri.

235. Kimm, 2004, 156.
236. Central Land Council, 2008, 46; Attorney-General's Department, Indigenous Justice and Legal Assistance Division, 2008. *Night Patrol Services—Frequently Asked Questions*, Australian Government, Canberra, 2. Available at: <http://www.ag.gov.au>
237. Skelton, R. 2007. 'Violence Behind the Silence', *The Age*, July 7 2007, Fairfax Digital. <http://www.theage.com.au/>; and The Hon. Jenny Macklin MP, 2009. 'Doors begin to open on safe places across the NT', *Media Releases*, Joint Media Release with Malarindirri McCarthy, NT Minister for Children and Families—Minister for Child Protection, and The Hon Warren Snowdon MP, Member for Lingiari, 30th of January, 2009. Available at: http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/safe_places_30jan09.htm
238. Central Land Council, 2008, 25; Northern Territory Emergency Response (NTER) Review, 2007. Section A—Summary of Task Force Findings as at September 2007, Commonwealth of Australia. Available at: http://nterreview.gov.au/subs/nter_review_report/177_drug_free/177_Drug_Free_2.htm
239. Skelton, 2007.
240. Skelton, 2007.
241. Skelton, 2007.
242. Kimm, 2004, 155.
243. Kimm, 2004, 155.
244. NPY Women's Council (Aboriginal Corporation), 2007. 'About us', Available at: http://www.npywc.org.au/html/about_us.html
245. Ngaanyatjarra Ptjantjatjarra Yankunytjatjara Women's Council (NPYW/C), 1990. *Minyma Tjuta Tjunguringkula Kunpuringanyi: Women Growing Strong Together, NPYWC 1980–1990*, Pitjanjatjara Council 1990, 3. See also NPY Women's Council (Aboriginal Corporation), 2007.
246. Jane Lloyd, 2008. 'Domestic Violence Related Homicide Cases in Central Australia', The Australian Crime Commission, paper given at *International Conference on Homicide—Domestic-Related Homicide*, 3–5 December 2008. Available at: <http://www.aic.gov.au/conferences/2008-homicide/lloyd.pdf>
247. Lloyd, 2008. We presume that this '67 times more' means 'more than mainstream Australian figures'.
248. Lloyd, 2008.
249. Jarrett, S. 2001. "'This is as Much as We Can Do': Aboriginal Domestic Violence", in Johns, G. ed., 2001. *Waking up to Dreamtime: The Illusion of Aboriginal Self-Determination*, Media Masters, Singapore, 106, 115.
250. White *et al*, 2006.
251. White *et al*, 2006, 5.
252. Blokland J., CM, 2007. *Chambers v Kerr* (2007)NTMC 055. Available at: <http://www.nt.gov.au/justice/ntmc/judgements/2007/pdf/20070821ntmc055.pdf>
253. Blokland, 2007.
254. Johns, 2008, 65.
255. Sowell, 1994, 10–11. On p.10 he writes: 'Education and personal safety may be valued by a wide range of human beings in a great variety of cultures, but what they are prepared to do—to sacrifice—in pursuit of those goals varies enormously'.
256. Johns, G. 2009. *No Job No House: An Economically Strategic Approach to Remote Aboriginal Housing*, sponsored by the Ian Wilson Liberal Foundation Inc., The Menzies Research Centre, 2009, 26–29. Available at: <http://www.mrcld.org.au> See also Etherington, 2007.
257. Johns, 2009, 27; see also p.32.
258. Toohey, P. 2009. 'A new lease of life' (Cover page title: 'The end of Aboriginal slum towns') *Weekend Australian Magazine*, Jan 10–11 2009, 14–18.
259. See Figure 2.
260. Johns, 2009, 26–29, and 34.
261. For an analogous insight, see Sowell, 1994, on Meiji Japan's response to the reality of the industrial world, 11.
262. Ian Mitchell, 2006. 'Quality of Life or Querulous Betrayal? The Aboriginal sponsored migration program of the 1970s', *Bennelong Conference 2006: Leaving Remote Communities*. <http://www.bennelong.com.au/conferences/conference2006/Mitchell2006.php>
263. Etherington, 2007.
264. David Weber, 2008. 'Indigenous jobs safe despite mining downturn', ABC RN 'AM' programme, 29 December 2008. Andrew Forrest of Fortescue Metals, is 'the project's chief promoter'.