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"The Justice Experience in an Indigenous Environment"

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The Justice Experience in an Indigenous Environment.

Foreword.-

In January this year the Queensland Coalition spokesman on Justice issues acknowledged that the Anglo Justice system had failed in addressing systemic violence and recidivism in indigenous communities. He announced that a future coalition government would introduce legislation which would acknowledge formally the place of Aboriginal and Torres Strait Islander customary law in the Criminal Justice System. It would require Judges and Magistrates to be advised by indigenous elders, in meting out appropriate
-penalties - excluding corporal punishments but including shaming and/or banishment (Courier Mail 13/1/2000 - editorial).

In this the coalition is mirroring initiatives being introduced by the current State Labor government, so that, on this platform, there appears to be bipartisan support for the development of a new relationship between the indigenous justice system and the Anglo criminal justice system in Queensland. It is worth exploring some of the implications of this development so that these initiatives do not flounder on the rocks of disillusionment or neglect - the ultimate destination of a number of previous initiatives aimed at addressing 'law and order' problems in indigenous communities. (Kidd, 1997,308).

This paper will incorporate a description of the manifestation and experience of justice from within an indigenous ambience, but its passage there will be of necessity circuitous. The extended discussion that follows is the result of reflections by a non-indigenous observer resident in an indigenous enclave -Palm Island in North Queensland. These reflections argue for the need to be prepared to do more than just have Anglo, courts implementing indigenous sanctions. Eventually, authoritative, empowered, stand-alone indigenous systems need to be recognised as independent collaborators with current systems in the task of addressing social dysfunction in the indigenous domain.

When the indigenous and mainstream systems interact, certain attributes that distinguish them are exposed. These attributes or themes arise out of a premise that there are in fact two spheres of existence, or domains, which Indigenous people must negotiate if they are to operate effectively and consistently with their identity - the Indigenous Domain and the 'liberal' Anglo Domain (Rowse, 1992; O'Malley, 1996). Acknowledgment of the former by the latter is a necessary prerequisite to an appreciation of the indigenous polity.

The domains are discrete but not, from the indigenous perspective, mutually exclusive. From the Anglo perspective, past policy and practice has often presumed a unilinear movement from one to the other as 'development' or 'education' takes effect through 'the assimilation process'. Refusal to participate in this forward process has been labelled recalcitrance, or has precipitated a renewed push to seek out different strategies to 'educate' or 'develop'. In reality there exists an unwillingness to be 'educated out', or 'developed out', of indigenesness. Indigenous people practice, encourage and pass on indigenous domain skills with a view to resisting attempts to assimilate into mainstream society, and thereby retain an identity as indigenous. Resistance is a part of the response to the liberal domain, which contributes to an assertion of indigenesness. (cf O'Malley (1996)-, Rowse (1992)). History has shown that indigenous people have exhibited a doggedness in wishing to retain an indigenous identity, and today the indigenous domain is being recognised as being a more permanent feature of the Australian polity.

The indigenous domain in the post contact period comprises a blend of traditional and adaptive elements in negotiating the challenges presented by the introduced culture. These 'continuities' and 'adaptations' are myriad. In this paper I will sketch out just three broad themes which on observation manifest distinct

aspects of the indigenous domain, themes which are not randomly obtained but which arise in the course of my employment in a 'correctional role' within the Anglo Community Justice System. They are

- (a) The themes of 'autonomy' versus 'relatedness', and their effect on the notion of 'community'.
- (b) The *experience* of 'Anglo justice' versus the *experience* of 'Indigenous justice'.
- (c) Conflict/Violence themes.

Any proposed changes to sentencing legislation will be impacted upon by the interplay of these themes within the two domains. As this summary attempts to show, it behoves the Anglo-liberal domain to allow the indigenous domain the freedom and space to develop and express Justice paradigms in conformity with its identity, while it is encumbant on the latter to accept responsibility for the pace, content, and style of the progress made in this development.

1. The Autonomy-Relatedness dynamic.

Relatedness is at the epicentre of indigenous identity. Before embarking on an analysis of its pervasiveness however, it is appropriate to discuss the -notion of 'community' because it is a word often used as a gloss in the context of relationship talk. It is important to differentiate 'relatedness' and 'community' for this reason, when speaking in a context of the indigenous domain.

'Community' is used almost exclusively in an Anglo domain context. I have rarely heard indigenous persons use the word outside the context of an Anglo/liberal agenda. Its use, by intention or not, has the effect of homogenising the indigenous domain, and thereby propagating a deception -that there is unanimity in it. Historically such unanimity would be difficult to sustain in ex-reserve settlements, given the mixture of backgrounds and tribal origins of residents. This is especially so on Palm Island the demand for homogeneity is itself a result of racialised thinking

'Indigenusness' within the indigenous domain has been a reaction to the move to homogenise. The resistance of indigenous people to this has been heightened by the years of attempts to homogenise by assimilation. In many ways the 'stolen children period' actualised the drive to homogenisation by mainstream Australia. Historically, 'Community' discourse reflects this drive to homogenise.

My experience of Palm Island is of a pluriform, multisectoral, and diverse, place. Artificial attempts to 'communalise' it - as has been done for generations - are doomed to frustrating failure. Nevertheless bureaucracies find it more convenient to deal with commonalities, and therefore continue to seek to create them, even artificially. This has been the experience of the population of the Palm Island *enclave.*' On Palm Island therefore, 'community' is by and large an imaginary concept, a concept of liberal ideology. It is all the more an illusory notion given the history of the settlement as a dumping ground for people from all over the State of Queensland for over sixty years, when 'removals' under the Act were part of Government Policy, (Kidd, 1996)

The concept that encapsulates the aggregation of people on Palm Island is more like 'multi- levelled interconnected relatedness'- an amalgam of semiautonomous extended family groupings, the result of original forced removal to the settlement, and of gradual change through generational blurring of some boundaries and setting up of others. There is an interrelated autonomy, which acts much like the weather pattern - ever changing around the margins with shifts and realignments tending sometimes towards 'balance' and sometimes towards unbalance.

While 'community' is foreign, so too is its antithesis -'isolatedness', or 'unconnected ness'.

Therefore together with a resistance to artificial homogenisation, which accompanies Anglo 'communal-speak', there exists in the indigenous domain the imperative to effect interpersonal transactions in order to establish and express relatedness. The many instances of 'trade' which cement people's relationship attest to this. **Cigarettes and a light at the** most basic level - asked for with expectation and given freely to express the relationship - through to 'carton price' or 'plane fare price' for more significant transactions, are expressions of this trade. It appears not so much 'trade' at first sight, because the exchange appears one sided, However closer observation reveals that what is traded is a kind of 'social capital'. Through transactions such as gift sharing and acceding to requests for goods or money, relationships are constantly being *actualised* or renewed by virtue of these transactions. This ongoing actualising of relationships at various levels is the way in which indigenous collectives express connectedness. This is the way solidarity is strengthened and at the broadest level is 'the murri way', as contrasted with the individualism - interpreted as 'selfishness' - of Anglos.¹

A second and contrasting attribute frequently observed in the indigenous domain is autonomy. The notion of 'autonomy of the self balances the imperatives of relatedness, and is also used to precipitate positive behaviour modification within the indigenous domain. The concept is used to encourage *people* to resist the pressure to conform to other group activities eg. group overindulgence. The idea of 'being boss for yourself is noted by a number of commentators (Bell 1991. Rowse 1992,- Sagers and Gray, 1998)

Indigenous aggregates, then, are marked by these two contrasting poles- -autonomy and relatedness. The tension between these attributes can lead to a hiatus of fragmented and inconsistent activity, seen from the point of view of the Anglo domain. An issue builds up and there is an immediate move to address it through a meeting, but follow-up action peters out. Reliance is had on the autonomy notion, so that the affected people might 'take the hint' without further coercive action being required, If change does not then occur, there often appears to be a sense of resignation, for people are their own persons (c/f Brady 1992, 74).

From the perspective of the Anglo domain, this appears to lead to a 'vacuum of authority', and is indeed a situation exacerbated by the strain of dwindling numbers of elders and burgeoning youth numbers.

To address this vacuum, some older people believe there is a need to find strong men'who are able to enforce proper standards of behaviour (called 'lawmen', but the term being used in an indigenous domain context, and not being the same as 'community policemen'). Such authority figures would police murn law (described as codes of behaviour relating to intra- and interfamily relationships). Such figures would need to exhibit physical strength and moral integrity, to *enforce* the decisions made by a broadly based representative (justice) group, but to do it in a way that takes personal autonomy into account. In this way a revival of more traditional forms of social control is hoped for. This will be discussed further below.

A brief postscript to this section ~ relationship discourse has a 'down side' in the indigenous context. In a social milieu where relationships play such an important role, the experience of 'baiting', teasing, or humiliating people about issues, particularly about past relationships which have not experienced appropriate closure, creates more prominent consequences, especially in the dis-inhibiting environment of substance abuse. Whilst the teasing itself is belittled in the liberal domain and labelled as childish ("sticks and stones will break my bones .. "), it is viewed very differently in a milieu which is based on the centrality

¹ For a discussion of this term, see Rowse (1992, 21). It is used in a neutral sense to denote social settings in Australia where indigenous people remain in the majority, and the incursions of non-indigenous institutions are limited. '- "Social Capital" is a term adapted here from an extensive discussion of the concept by Mark Latham, in Civilising Global Capital (1998), Part 5

of relationship expression and reinforcement. On Palm Island, teasing and provocation in both an adult and juvenile context is often a pre cursor to serious violence. There is an imperative, from within the priorities of the indigenous domain, to address situations of teasing, 'false' accusations, and other verbal and physical challenges to particular relationship situations. The role of locally developed forums for the resolution of these flare-ups is Pivotal.

2. Anglo Justice and Indigenous Justice themes.

The relationship I autonomy dynamic is a key factor in the expression of social order in the Indigenous domain and has great bearing on the circumstances in which indigenous persons are confronted by the Anglo criminal justice system. I will begin this section with a thumbnail picture of the on-the-ground manifestation of the Anglo and Indigenous justice systems.

The (Anglo) Criminal Justice System:

The Criminal Justice System on many indigenous settlements is manifested as a foreign, transplanted entity. It is a system, which in the consciousness of many is difficult to differentiate from that which oppressed for generations past. On Palm Island it's investigative arm is present through a strong on-site Police presence, and its judicial arm is represented by a fly in /fly out Magistrates Court (usually between 1 and 3 days per fortnight). Legal Aid provides legal counsel on Court Days and a resident field officer for court liaison. Courts obtain their workload from the police activity in between Court days. A permanent on-site adult Community Corrections presence (to manage work and supervision orders) and a locally managed Community Corrections Centre for low classification prisoners and parolees represent the 'rehabilitative' arm of the system for adults on the island. The Juvenile jurisdiction is serviced by a fly in/fly out Juvenile Justice presence with permanent local oversight of community service supervision.

How is the judicial component manifest? With the 'separation of powers' blurred in the eyes of some by the role of Police as court officers (Clerk of the Court) police arrest and summons alleged offenders to the Magistrates Court. On court day a visiting prosecutor outlines the Crown's case. Negotiations at times occur between defence and prosecution on minor points of fact, to enable the resulting uncontested cases to proceed. The role of Legal Aid on a plea of guilty is to represent the interests of defendants such as to minimise the judgement/penalty on the client by maximising the effect of extenuating circumstances. The sentencing court's regard of the victim's position is expressed in the generalised reprimand given by the magistrate together with the sentence, based on prior offence history and supervision response. There is little personal stake in the process by the victim, who is rarely in court unless to give evidence in contested cases. In addition the protracted nature of court processes is in stark contrast to the intense sense of immediacy often manifest in indigenous affairs.

Magisterial style varies with the persona of the visiting Justice. At times, explanations from the Bench are fuller and more thorough. Again though, the system gives limited opportunity for defendants to address the court themselves when they request it- this is generally done on their behalf by counsel. This process has evolved in the Anglo dispensation to promote the efficient and professional management of cases according to the principles of Statute law. However it can be perceived as running counter to the indigenous value of autonomy (being boss for yourself) and self responsibility discussed above.

In deference to the principles of due process, the Anglo justice system is not 'immediate' in its implementation. Timewise, it disassociates the crime from the penalty, in proportion to the magnitude of the offence, through the court processes of adjournment, remand, committal-, negotiation, and eventual determination of guilt or innocence according to Law. To maintain that the Court process is about seeing the Law upheld rather than seeing Justice done is trite but accurate. The process is perceived as ponderous, especially the preliminary proceedings. Then on the day the case is finalised, if such is to

happen locally, events happen at breakneck speed. The main players arrive on the 9am plane, and generally depart on the 3.30pm plane. The language of the court is advanced technical Standard English, which is delivered at a fast pace between prosecutor, defence, and bench. The defendant usually needs prompting to keep up with their required responses. "How do you plead?" "Have you made your plea of your own free will?" The language of the court is non-vernacular. Information (sentence guidelines) that must be taken into account is articulated in a way that satisfies the requirements of the Law ("I take into account your early plea .. I accept' X 'orY as a circumstance in mitigation. - ") From the indigenous perspective the law is largely unintelligible. Its processes are indecipherable, and the speed of the action required to get all the matters heard within the time period of the court adds to the incomprehensibility of the court experience. (Many players in this drama are aware of the situation, and some Magistrates have already expressed a willingness to seek more participative processes within current legislative constraints.)

In the case of a plea of 'not guilty', the hearing, including the cross examination, is in a style which highlights the difference between the actors at home with the system - police witnesses, court personnel - and those for whom the scenario is foreign - indigenous witnesses. The setting as well as the process is foreign. Testimony, cross-examination, objections, the dissections of one's story into unitary fragments, all occurs with the linguistic precision required in Standard English. -Prosecutor- "How was he?" Witness: "He was drunk." Defence Counsel: "Objection." (It is then required to describe the situation without making the statement 'he was drunk', as the witness is not a recognised authority, or expert witness, on 'being drunk'.) The fragmented nature of the end story technically follows rules of evidence, but confuses the evidence giver. The latter is totally at the mercy of the 'technicians' - prosecutor and defence counsel - in whose hands the matter is laid bare.

It may be argued that this is racialising the mysterious processes of the Legal system unnecessarily, since these same processes are a mystery to many who are not indigenous. It is however not only the mystery of the process that I wish to highlight, but also *the stakeholding* in the process. The indigenous domain has no stakeholding historically. Furthermore that same domain inherits a legacy of having been that which the Anglo justice system pitted itself against, in justifying dispossession and alienation. Equality before the law is not an experience Aboriginal Australia has a long history of. It is not theirs.

I once spoke with a person called to be a witness in a particular case some time after a hearing - a relative of an accused, who himself recalls his younger days when he was 'wild and on the grog'. He is now sober and has a respected role in the settlement. He said he felt torn. At the time he knew what he saw and stated his evidence truthfully, even though it differed from the recollection of the accused. He also understood that the recall of severely alcohol -affected persons is distorted by the 'blackout' experience. This witness longed for more indigenous input to the court process. An indigenous person could sit with the magistrate and facilitate a more complete dialogue between witnesses and the accused. The purpose of this would be to 'open the eyes' of the accused and working out with them and other interested parties a plan of action which would assist the accused to look at their situation and address the behaviour which has caused the court appearance. It is clear from this suggestion that the constitution and purpose of such a 'court' would be radically different from the purpose of the court as presently constituted. Such a court would be participatory, involving, not impartial or neutral.

Calls for greater autonomy and community control of justice administration issues are not new, (QLRC recommendations (1991) in Chantrill 1998, 24) and the challenge remains one facing the mainstream system. Now, implied in the recent publicity of both major parties in Queensland, courts 'in an indigenous context would include indigenous input into sentencing options. The suggestions of the informant outlined above, however, go far beyond this. The disembodied nature of the current Anglo Court system is foreign to the indigenous perception. The indigenous domain seeks to redress imbalance by restoring balance - by assisting the perpetrator to have insight, ie. that the situation as perceived by the perpetrator was not

the actual state of affairs. **This is seen as** only possible *by involvement* of significant others to alter the perspective of the offender, within the context of a modified 'court' context. This is a change of essence of the Anglo court system, not merely one of degree.

The Indigenous 'Justice System':

Indigenous justice as remembered and expressed in the settlement is, in contrast to Anglo justice, immediate, focussed, and involves interaction between victim and offender and their adherents. It is uncodified, and, by liberal standards, informal and fractured. Furthermore, alcohol and drug abuse can distort the expression of indigenous authority systems, because it intrudes directly on a balanced interaction between offender and victim and their adherents. Substance abuse also subverts the source of the expression of justice - elder authority.

Rowse, in referring to a number of studies, situates indigenous 'authority' initially in the older landholding groups, and secondarily in the various organisations whose office-bearers become the gatekeepers for the largesse of welfare colonialism. (Rowse 1992, 40-41) The authority of the latter is tenuous since the value of autonomy is so central to the indigenous psyche, and this type of authority depends on the continued ability to produce the goods for constituents. The authority deriving from organisations springing from the Anglo domain (Registered Aboriginal Incorporated Bodies and Councils in various forms) is still subject to the indigenous autonomy principle, (Sullivan. in Rowse 1992, 36). In Queensland such organisations labour under the added stigma of having been, in the past, tools of Anglo domain oppression (Kidd, 1997, 245)

In relation to Palm Island, the senior traditional owners are not current residents, and current residents are descendants of a great number of tribal groupings (40) who were coerced to initial residence on the Island reserve. Authority is therefore to be gleaned from a re-collection of elder respect within groups, and by arrangement, across them, based on principles which emanate from the values of relatedness, autonomy, and personal responsibility already outlined above. A number of initiatives have been taken to seek ongoing dialogue between the Munburra (non-resident traditional owners) and Bwlgolman (resident descendants of transferees) to forge a working relationship based on traditional principles out of which authority might be exercised. This process is ongoing.

I referred above (p 4) to a call for respected and authoritative law people to come from within or outside the settlement. This call for a restoration of the traditional dynamic recognises that the introduced system, rather than offering a solution, precipitated the problem.

Steps have been taken in some settlements to resurrect the idea of 'respected elders in a cultural setting', to be the basis of an indigenous justice instrument. Such dispute resolution panels or community justice panels are seen as "an attempt to play a peacekeeping role and to bring aboriginal values to bear upon criminal offenders." (Hazlehurst, 1994, 69).

A Palm Island Justice Group was formed in 1993 as a result of a broadly based grass roots consultation, aimed at seeking out men and women with moral authority. The essential starting point must be that such groups arise from within their *constituency* rather than from the implementation of another 'government program'. In the Palm Island Group, there is a forum for victims to state their case, offenders to state their case, and a dialogue to occur in setting out the actions required by all parties to attempt a partial restoration of the balance upset by the dispute. The following stages often make up the process-accusation, response, catharsis, intervention by statement of relationship of accused and accuser to various members of the Group, (I am your uncle/aunt, but I am also the cousin of this other group, so I know you - you are no stranger to me), direction by group members, rejection of perceived inappropriate

self justifications, invitation to further response, exhortation to action, reconciliation, hand shake, apology, Restoration of relationships and the responsibility that goes with it are goals of the interchange.

This process is in stark contrast to core elements of the liberal domain's formal system - impartiality, objectivity, formal rules of admissible evidence, principle of innocence until guilt is proven, don't speak for yourself but only through your legal representative. Even more 'informal' liberal initiatives such as mediation programs are premised on the neutrality and non-partisan nature of the convenor's position.

The aim in Justice Group interviews is to sort out disputes before they go to the criminal justice system. Critics may claim that this process reinforces the view that the Criminal Justice system is the 'real' system and the indigenous Justice initiative is subordinate. The criticism is valid as long as the source of authority for action is unclear, or is derived solely from the Anglo system. But provided such justice panels are given the scope to develop their own directions and priorities, the opportunity to seek resolution of issues in their own way, and *provided such groups have their authority sourced and acknowledged by their constituency and acknowledged by the mainstream*, then the question of subordination may be irrelevant. The question of the source of their authority when the traditional landholding authority no longer applies, and when representativeness is questioned, is a continuing challenge, however.

Self-determination is still often described in terms of adherence to the liberal domain, its values and its criteria. The indigenous domain does not yet have legitimacy on its own terms - the precise form of legitimacy required for a viable social control system. . Harding et al (quoting HRSCAA 1990~25) sum it up:

"It is ironic that Aboriginal communities are being asked to accept *non*aboriginal structures in order to have a greater control over their own affairs." (1995,12)

It is therefore essential that legislation utilising elements of traditional indigenous law forms, such as certain sentence options, acknowledges the authority and legitimacy of indigenous forms *on their own* terms, and not only because such authority has been bestowed on them by liberal / Anglo decree. With all mainstream political parties in Queensland at one on the goal of indigenous participation, it is important that the foundation of that participation also be acknowledged. Having said this, grass roots based Justice Groups do not seek to operate totally separately from the mainstream system; they just seek to have their authority sourced from outside that system. The challenge for indigenous groups is to tap into their own authority source, identify their customary law principles and articulate precepts arising from them. The challenge for the Anglo system is to accept variance. The Palm Island experience is one of seeking a partnership in the Justice arena. It acts in the Indigenous domain Liberal domain interface such that at times it adopts liberal systems and at other times draws on indigenous models of action based on contradictory values to the liberal regime. It seeks at some times to act in concert with the --judicial system and at other times to act more immediately - even preemptively - to apply principles appropriate within the relationship orientated indigenous domain. This freedom of discernment is a central plank to the principle of self-determination. It is the wish of the Group to be able to utilise a dimension of 'physicality' in appropriate cases of retribution. At times the 'growling' of offenders is robust, and the inability to include a physical element to the interaction is at times a frustration. (The question of violence is discussed in the next section). 'Growling' is however routinely followed by a tapping into the desires, hopes and aspirations of offenders, for themselves and their kin, to encourage a change of heart in them. The challenge for the indigenous domain justice system is to maintain credibility and authenticity from within its constituency - and to continually 'actualise' that credibility in the same way that 'relatedness' is actualised, as we have seen above.

What will develop then is an evolving concept of a "Two Laws " philosophy (Murphy 1999, 10,- Williams 1987,127ff). This allows elements of integrity and autonomy of Aboriginal Law to be maintained, and

allows other elements of social control to be relegated to the sphere of Anglo Law without compromising the former. This is an example of the flexibility and resilience of the indigenous domain, which is centred not on principles of consistency, but on principles of appropriateness to a particular situation. The 'two laws' concept is worthy of further development in indigenous enclaves as a tool to move forward on matters of social control.

The Justice Group does not have a wish to completely replace Anglo forms of authority (police and courts) - indeed it has no complete corpus of law/sanction to take the place of the Anglo forms - it seeks rather to work with them. It seeks a duality of operation, an implementation of the mainstream norms as adjusted for the particular situation which arises when an indigenous enclave is involved, together with its own sanctions where Anglo law is ineffectual. It does seek to have its own source of authority acknowledged in its own right, within its own sphere. The liberal domain does not yet acknowledge indigenous structures of social control in the way it has been forced to acknowledge indigenous structures of landholding in the *Mabo* decision. This struggle is still ahead. (Nettheim, 1995).

On the other hand it behoves the Indigenous Domain to seek to articulate the source and content of the structures of control it seeks to manifest, thereby actualising its credibility within the Indigenous Domain.

What is being proposed is not exactly the same as 'Aboriginal Courts'. The historical experience of such courts is ambiguous. (Kidd 1997, 308). Critics state they are a mechanism of assimilation, not empowerment (Murphy 1999, 7). Yet they at times appear to meet a need and are utilised in some indigenous environments. The Palm Island Justice Group is not opposed to the use of indigenous Justices and Courts per se, but currently does not utilise them. More broadly, it seeks to have acknowledgment of alternative indigenous systems, rooted in indigenous authority forms, as determined within the indigenous domain. To do otherwise only recalls the regimes of the 1960's when "(community) police, courts and councils were perceived as expressions of official, rather than Aboriginal, will." (Kidd, 1997, 245).

Criminogenesis arising from the cultural *gaps between* indigenous groups can only be effectively addressed from within the aboriginal domain in the long term. A liberal ideology here will continue the colonial legacy. The Justice Group appears to be able to differentiate between its activity in either domain. It can handle heterogeneity because heterogeneity is part of the indigenous domain; the challenge is for the liberal domain to acknowledge such heterogeneity.

To conclude this section of the discussion, an example may shed light on the urgent need to develop a working relationship between the indigenous domain and the liberal domain in the Justice area. One endemic problem is the phenomenon of 'sly grog' running in many settlements. In a close enclave such as Palm Island, the identities of the main players are well known through the murri network. Yet evidentiary rules conspire to hide the chain of proof of complicity in the trade. Indigenous law systems have a sanction against operators who affect the community so detrimentally - banishment - a demand that they be exiled from the community for a set period of time. Should the death of a relative require that they return, their return would be permitted only for the funeral service before their exile should continue until the period decreed is completed. The problem is how is such a sanction to be decided? How is it to be applied, without resurrecting the ghosts of similar activities perpetrated 'under the Act' of previous eras? Who is to apply it? What methods of enforcement are to be available? The liberal domain system can only do so through its own ponderous system that is ineffectual in curbing the problem. For Anglo law systems are charged with upholding statute law only, and must obey statutory rules of evidence. There is a case here for the acknowledgment and promotion of Two Law systems, or two sanction systems, operating sympathetically.

3. Violence / Conflict themes.

Statistics on violence in the indigenous domain are well documented. In 1997, 25% of the male indigenous prison population were in custody as a result of assault type convictions, compared with 14% of all male prisoners. For females the figures were 23% and 11 % respectively. (ABS, 1999), Conflict and violence are very much part of the indigenous experience. The causes are many and complex, The experience of 'autonomous interconnectedness' of discrete family units already discussed gives rise to many instances of conflict - often culminating in violence, An eighty year history of fragmented groups in what was for generations an oppressive governmental system no doubt contributes to this experience (Kidd 1997). How are these themes manifest today?

I am continually confronted by the propensity for the resolution of conflict by physical means. Sometimes 'bashing' appears to be a reflex response in a 'hot' situation, but often it is also spoken of as a calculated and forceful assertion of one's position. The bashing is referred to in the context of male on male conflict and female to female situations, as well as cross-gender conflict. In some settings when such conflict erupts, many observers might appear, but there is little interference, unless the wider family of either party sees themselves as needing to be involved. I have a sense that, while the Anglo domain sees all such activity uniformly as 'assault', there appears to be a spectrum or hierarchy of interpretations of physical conflict in the indigenous domain. A 'fair fight' is seen as an appropriate tool in the resolution of conflict, but 'doubling' (king-hitting from behind by a second party) is provocative and unacceptable. A bashing is an endemic 'solution' in the matter of conflict resolution. While violence is a mark of dysfunction, and many instances of family violence result from an unacceptable abuse of power or the desire to control, some expressions of physical conflict resolution appear to have the mark of legitimacy in the indigenous sphere. There is no automatic aversion to such physical responses in a proper context - even respected members of the settlement might condone it on occasion.

Young men have jeopardised supervision orders in adhering to prescripts requiring them to be involved in 'payback' situations. Young women have worn convictions of 'assault bodily harm' (against other females) in a situation where they have met their obligation to uphold and defend kin who have been offended against by a bout of sustained verbal teasing. Their obligation to act in such a way far outweighs any inhibition to do so by virtue of a law or order of a 'white court'. Various intensities of taunting between 'combatants' are a regular feature of conflict. The taunting is magnified in the context of substance abuse. It often has the desired effect - to provoke a physical confrontation, although the first intention appears to be to provide a ritualised platform for emotional release.

Physical confrontation and resolution of conflict, then, appear to be part of the interpersonal 'tool kit' of social relations on Palm Island. It appears to be associated with the indigenous domain, and is not to be explained entirely as an inheritance of previous oppressive government policies. This needs to be taken into account in any attempt to address the unacceptable manifestation of violent behaviour.

While a certain level of violence is tolerated, or even seen as an appropriate response in a situation, inappropriately violent behaviour is referred to the Police or, in some relationship conflicts, to the Justice Group. Referral to the non-indigenous authority, however, can lead to erosion of connectedness within the indigenous domain: "the relationship between the law and self help is inverse-, it follows that the larger and more intrusive a police force is, the weaker self help will be, a pattern that in the long term exacerbates the problem of crime". (Black, D. (1980) quoted in Harding R.W., Broadhurst R., Ferrante A.. and Loh N, 1995, 110)

Nevertheless, on Palm Island there are some elements of the indigenous domain which seek to relegate to the formal police service all responsibility for 'cleaning up' the settlement. On the other hand there is much residual resentment of the police as an institution. Police are seen as an outside agency with a history of interaction with the indigenous domain that encapsulates the indigenous experience of injustice.

The police are in a difficult position: Police would be quite rightly criticised if they did not respond to reports by Aborigines of Aboriginal violence. The problem is that the prevalence and incidence of this kind of offending tends to affect police expectations and attitudes in all areas of contact with Aborigines... There follows significant over-policing in the area of good order offences." (Harding et al p11 31-2)

In the light of the discussion thus far, this dilemma might be addressed by consideration of the following~ Might the inverse relationship between 'policing' and 'internal social control mechanisms' inferred above be replaced by a more matrix-like approach? Could a closer police/justice group liaison (rooted in local sources of authority) address some issues of violence, and redefine where the line is to be drawn between acceptable and unacceptable behaviour? How could this come about without Police compromising their duty to uphold statute law in relation to assaultive behaviour? These dilemmas could be handled by a fuller acknowledgment of 'two domains' described earlier, and the further evolution of the notion of 'two laws' impinging on the indigenous domain. On Palm Island, support of a re-energised Justice Group has the potential to facilitate the redefinition of indigenous social control mechanisms and their promotion.

To further work through this issue is important in determining an appropriate response to general and family violence in Aboriginal communities.

Aboriginal Law is inextricably tied up with the concept of social capital discussed earlier in this paper . Statute and the common law alone are inadequate in dealing with indigenous law. (Atkinson, 1996, 4) The challenge is how can either manifestation of Law (Anglo and Indigenous) address issues such as family violence and abuse. How contemporary indigenous law is manifested, how it exercises its authority, how this exercise is enforced, and how it is accepted, are issues to be worked through. Some addressing of this issue is required if the prevalence of violence is to be confronted. The indigenous domain will need to be a participant, and given the attitude to the physical resolution of conflict, the direction of management could be significantly different to that which obtains in mainstream Australia.

CONCLUSION

These reflections and related discussion may seem raise more questions than answers. Yet the issues raised need to be taken into account in association with any proposal by both major political parties to incorporate indigenous penalties within criminal justice sanctions. What this discussion highlights hopefully is that it should not be a case of merely grafting some selected acceptable 'black red and yellow sanctions 'on a 'red white and blue fabric'.

Education and development technologies need to be preceded by recognition and acknowledgment technologies.

The reality of the indigenous domain needs to be recognised, and the implication of this recognition is that previously absolute truths need to be redefined as relative. The indigenous domain remains vibrant and viable despite a sustained program of eradication. Values of relatedness and autonomy inform this domain and permeate its awareness of social control mores. It seeks a participatory relationship rather than a parasitic one in the application of justice, and it invites the mainstream to consider relativising itself as this relationship develops.

The search for this new participation is not concluded by legislative incorporation of indigenous sanctions into Statute law, although this may indicate good will and be a start. It is furthered by recognition of

alternative systems of social control based on customary laws in a contemporary setting. In this way the indigenous domain and the Anglo domain can carve a cooperative and mutually respectful future.

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