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ABORIGINES AND THE CRIMINAL JUSTICE SYSTEM

Legal rules are merely elements of our cultural order (1). There are many social processes at work which cause people to use or not to use rules (legal and non-legal), to abandon them, to bend them, to replace them. A legal system comprised of institutions, rules and procedures and dedicated to the implementation, regulation and enforcement of rules is therefore but part of the whole complex of action which organize and control our behaviour.

In any discussion about criminal justice system it is necessary to deal simultaneously with the rules, the actual behaviour addressed by those rules, the context in which it takes place and the ideas and assumptions which accompany it.

This paper addresses some of those processes outside our legal framework and the conditions of their operation in a cultural order so very different from the dominant one.

THE BACKGROUND

Aboriginal people commenced living on missions, government settlements and pastoral properties in the late 19th Century and thus began the system of institutionalised control over many Aborigines which did not end until the 1970's. These Aborigines were given limited opportunities to make their own decisions and control matters which affected them directly. Those Aborigines who did not live in such settlements were regarded as "myalls or nomads".

Three decisions during the 1960's had, and continue to have, a tremendous impact on the lives of the Aborigines. In 1964 Aborigines were given the same rights to the use of alcohol as White Australians. In 1965 the Arbitration Commission granted equal pay to Aboriginal pastoral workers. In 1966 the Department of Social Services removed the last discriminately provisions, disqualifying nomadic or primitive Aborigines from receiving benefits or pensions. In 1967 the constitution was amended which enabled the Federal Government to treat Aborigines the same way as White Australians. It is important to note that these changes took place barely twenty five years ago!

There have been many changes but the degree of adherence to ritual and ceremonial life in many communities is still strong as are responsibilities and ties to country. D.H. Turner's observations in "Tradition and Transformation" a study of the effect of mining

operations of the life Groote Eylandt Aborigines are equally as true for many traditionally orientated Aborigines throughout North Australia:

> "In the economic as in the religious sphere there has been a positive acceptance by Aborigines of various White ideas and practices, accompanied by a substantial rejection of related traditional elements. This contrasts with the situation in kinship and marriage patterns where the rejection of the 'old ways' was not accompanied by positive acceptance of the new. Here, basic principles remained intact and, although change occurred, it was change within tradition. . . . People still respond to the same categories of kin in generally the same way for the same reasons in an economic context as they did traditionally, although the composition of these categories in terms of the local group affiliations of those included has become relatively 'disorganised'. A similar continuity was found in the social relations of ritual activity from the past to the present." (2)

ABORIGINAL LAW

For many Aborigines tribal law has no practical importance because they have fully accepted our ordinary Australian manner of life. For many Aborigines however, traditional values and ways of thinking still are a powerful influence in their daily life. So why the need to discuss Aboriginal law at all? To my mind the advantage is three fold.

Firstly, the relevance of traditional values is important in establishing the traditional orientation of a person or of a community, or if it exists at all.

Secondly, to understand some traditional values and tribal law may help in exploring those modified varieties of traditional law and values under which many Aborigines and Aboriginal communities live today.

Thirdly, the "Aboriginality" of a person or community is thus better understood "as some indetermine zone of a continuum stretched out between a notional pure tribal life at one end and the varieties of White Australian life at the other. (3)

The rules and practices of Aboriginal culture are said to originate in the Dreamtime, that mythical era in which created beings shaped the land and imposed life's order. These rules and practices deal with many aspects of life including responsibility for land, objects and ideas associated with the land, complex structures of kinship and family grouping, rules of marriage, the conduct and resolution of disputes. The law was an all encompassing concept of a morally ordered universe.

In his book "Desert People", M.J. Meggitt described the law as:

> "an established and morally-right order of behaviour (whether of planets or of people), from which there should be no

divergence; it can be translated as "the law", the line or the straight or true way." (4)

Actions as diverse as the making of fire (human technique), the mating of bandicoots (animal behaviour) and the avoiding of mothers-in-law (social convention) are subsumed under the law.

Tribal law was in effect all the main rules which control the behaviour of a particular society.

The meaning thus attributed to "law" by Aborigines is very different from what lawyers mean when they use the same word:

> "The Law in the broad sense of our whole legal system with its institutions, rules, procedures, remedies etc is society's attempt through government to control human behaviour and to prevent anarchy, violence, oppression and injustice by providing and enforcing orderly rational fair or workable alternatives to the indiscriminate use of force by individuals or groups in advancing or protecting their interests and resolving their controversies. "Law" seeks to achieve both social order and individual protection, freedom and justice." (5).

This statement places legal institutions and lawyers at the core of our social discipline in contrast to Aboriginal society which:

> "had no recognized political leaders, no formal hierarchy of government . . . with permanent and clearly defined legislative and judicial functions [but] there are explicit social rules which by and large, everybody obeys; and the people freely characterize each others behaviour insofar as it conforms to the rules or deviates from them." (6)

As lawyers we often assume there is some cultural equivalence between the law as we know it and customary or tribal law e.g. what does customary say about offensive behaviour or property offences? Often the comparison cannot be made or if it can be, the rules of conduct and thought processes upon which they are based are so different as to render any comparison meaningless.

Of recent years studies by anthropologists as to the process of disputing and dispute settlement has resulted in a better understanding of customary law and the actions of individuals involved in various phases of conflict.

RULES AND DISPUTE SETTLEMENT

In his book "Kinship and Conflict" Hiatt concluded that among the Gidjingali (a clan near Maningrida) most conflicts were about women. He says:

> "There was no institution with authority to deal with such disputes; there was a community of people with a set of common values and a system of formally defined rights and obligations. On rare occasions, individuals achieved their ends in defiance

of the code of good conduct and without regard for the legitimate interests of others. But usually they attempted to justify their actions or demands by appealing to an acknowledged right or value. As both antagonists could often produce acceptable but opposed arguments . . . a quarrel was seldom an obvious clash between right and wrong. Nevertheless, public opinion about the merits of the case clearly influence the behaviour of people concerned and was a fact in determining its outcome." (7) (My underlining)

Berndt and Berndt on the other hand have argued that Aboriginal Law must be understood in its own terms. "Much of Aboriginal law was necessarily informal, but much of it too was institutionalized". However

> "To identify firm legal procedures in traditional Australia, we might ask who was, or who were, in a position to maintain them. The answer must be in terms of particular persons (that is leaders). But part of it is to be found in the ethical system itself, which established a blueprint for behaviour that, ideally, had to be followed by members of a particular society."

Berndt and Berndt further asserted that "self help is the basis for legal procedure in Aboriginal Australia, but in most areas more or less formal discussions or meetings are held at irregular intervals to settle grievances." (8)

There is difference of opinion within anthropological circles as to the extent of the authority exercised by elders in local groups and at meetings of such groups and whether self reliance and mutual aid within the framework of generally recognized norms was more important.

This difference of opinion is to my mind better understood by a consideration of the type of "offences" which are the subject of any dispute. I can do no better than to quote Maddock in "Aboriginal Customary Law" to explain what I mean.

> "Offences may be classified as public (criminal) or private (civil). Most public wrongs are cases of incest, sacrilege or murder by magic. The last is the main cause of disturbance among Aborigines, because magicians are blamed for the deaths of young or apparently healthy people. Criminals are not tried, but elders may confer together after an offence. For example, an inquest may be held or a magician consulted to fix responsibility for a death.
>
> The usual private offences are homicide (by straightforward violence presumably), wounding, adultery, wife-stealing and theft. Only the injured person and his friends or kin are involved in cases of private wrong, except that elders or the group may intervene to prevent it growing into a feud or war. This indicates that public law, if we may call it that, is concerned with maintaining peace as well as with punishing crime." (9) (My underlining)

An example of public wrongs is given by Maddock:

> " . . . a woman took a short cut to a spring. This led her within sight of some trees where ritual objects were stored. The prints of her feet being discovered, she was tracked down and speared to death. A third case, involving Pitjantjatjara, ended in a trial of the killers before the Supreme Court in Alice Springs in 1935. A young man camping with others of his tribe at a soak 'was secretly accused of betraying "tribal secrets" to women, and the local Pitjantjatjara elders ruled the he should be killed. A number of young Pitjantjatjara men, who had been detailed to execute him, took him away one day . . . on the pretext of . . . a wallaby hunt.' One of the party shot him with a rifle borrowed from a White man, and then the others attacked the fallen body with their weapons 'in token of their common responsibility as avengers.'"

and of a private wrong:

> "Cassius, a man reputed to be aggressive, was married to Sarah and Elaine. They were his promised wives. After Sarah's death Cassius said that Elaine's young sister Nora should be given to him. She was already promised to Douglas. A fight resulted in which Douglas injured Cassius. Afterwards Douglas said to him: 'I have given you a beating. Take the woman and let us live in peace.'
>
> Later on, however, Nora eloped with Cecil. Cassius and his son Maurice overtook the fleeing couple and brought Nora back. Cecil put up no resistance at the time, but he and Cassius later fought each other with spears and clubs. Neither was badly hurt. Then Nora, who had let it be known that she preferred Cecil, moved to his camp. This provoked Maurice into announcing that he would kill her if there was any more fighting between his 'fathers' (Maurice, a true son of Cassius, was also son to Cecil, but in a distant or classificatory sense). There was not, but Cassius assaulted Elaine because of her sister Nora's desertion of him. The dispute, as related by Hiatt, ended with Elaine's brother (in a classificatory sense) threatening to kill Cassius if he did it again."

Maddock observes that:

> "This case conveys the feeling of private disputation among the Gidjingali - and is no doubt fairly typical of self-help proceedings in many other Aboriginal communities. It could be described as a running dispute which would die down before flaring up again. Individuals acted to further their interests, or to help someone to whom they were well disposed. Neither the community nor its leaders (assuming them to exist) intervened, but apparently there was nothing to stop anyone who chose from involving himself. There was an undercurrent of violence, but the worst of it was only threatened." (10)

The example of the breach of public role or sacred law which prompted the tribal leaders to act illustrates that they did not fear retaliation by the wrong doer or by his supporters. Whereas

in the private dispute "the seemingly chaotic and wilful resort to self-help by individuals who pit their strength and wits against each other. The community stands back, as it were, though now and again some darts forward to join in on one side or the other." (11)

Between these two types of dispute resolution one finds the formal ritualized ordeals or duels in which case a person submits to having spears thrown at him. This type of dispute resolution show a public involvement in a private disputation in the general interest of the community and that on occasions the elders or a group may involve themselves in the case of a private wrong in order to prevent it going into feud or large scale dispute.

In summary then, breaches of public wrongs constituted breaches of binding norms and as such are most likely to meet with sanctions from those obliged to instigate them. Breaches of private wrongs however, resulting in quarrels or disputes, seldom involve an obvious clash between right and wrong but rather breaches of non-binding norms and it was no-one's particular business to pass judgment on or to intervene. If such private wrongs entail a violent disturbance however, then bystanders and others may try to halt the dispute before it goes too far. Such intervention was not obligatory for anyone in particular but constituted an anonymous collective action to restore peace.

It has been commonly assumed that punishment for the wrongful acts was regulated by a series of rules and activated by some form of collective decision. But in traditional communities punishment may be a response to acts which were not so much as unlawful but as requiring recompense or redemption to the affected party. The response or punishment may not be specifically laid down or stipulated and may be chosen from a range of alternatives as a result of a process of argument, mediation or agreement. These punishments included:

- death
- spearing, or other forms of corporal punishment
- individual duelling
- collective duelling (including specially structured encounters such as makarata)
- shaming or public ridicule
- all rigorous forms of initiation or teaching
- compensation
- banishment

Anthropological studies suggest that punishments of death, spearing and banishment were more likely to be associated with "public wrongs" that is breaches of sacred law. While duelling, compensation or ridicule were more likely to be associated with "private wrongs" (adultery, wife stealing, failure to meet family obligations etc.).

Dispute resolution resulted in any one of a range of possible outcomes and there was little resemblance to the impartial and impersonal evaluation of the rights of disputes and parties or on the culpability of wrong-doers.

The locus of disputation and social control in traditional circumstances is thus firmly oriented around the parties and their supporters within the community in contrast to the formal and impersonal dispute resolution of White society inside a Courtroom. Furthermore, the outcome of any dispute in tribual circumstances is no guide to the resolution in similar disputes - "It is not analogous to a judicial decision or to a community determination." (12)

THE COMMUNITY

Today most Aborigines in North Australia live in one form of community or another. The traditionally orientated Aborigine is more likely to be found on communities where English is not the main language, initiation rituals are still performed and traditional authority and forms of behaviour and methods of communication are still used to an appreciatable extent. The outstation movement is closely associated with these Aboriginal communities. The balance of population lives in larger urban centres, country towns and in fringe camps associated with these towns or pastoral properties.

For those Aboriginal people who live semi-permanently or permanently in Aboriginal outstations and settlements or towns, services and adminstration are linked to the model of service provision which is intrinsictly tied to the concept "community". As local autonomy and community justice mechanisms are means by which the recognition and implementation of Aboriginal law has been proposed it is important that we understand what this concept "community" means. (13)

By the mid 1970's there were "Aboriginal communities"; "Aboriginal community councils"; "Aboriginal community development programs"; Aboriginal community advisors"; "Aboriginal community groups and/or associations"; "Aboriginal community resource and training centres" and so on. "Community" suddenly became a self evident cultural characteristic; culturally appropriate, democratic and ensured equal access.

The term conjures up a picture of a united cohesive group of people working together towards a common goal, making decisions for themselves about their future and putting aside self-interest, improving their situation and improving their access to services and resources. When used in its usual vague or undefined form it can give the impression that geographic communities and socially organized communities are one and the same.

The suggestion that wherever a geographic Aboriginal community exists a cohesive structured community also exists is often inaccurate.

It is not possible in this paper to outline the history of Aboriginal communities but even the most superficial appraisal show many Aboriginal geographic ccmmunities/towns are not "self governing social units" but rather can often be collections of families, language groups or clans whc can be in competition for resources.

By way of illustration, on Groote Eylandt there are 12 different clans living at Angurugu settlement which is situated in land traditionally owned by the Lalara clan. As is well known, mining operations affect significant areas of Groote Eylandt and some of these areas are owned by different clans. Before the creation of Angurugu all clans lived in their traditional lands throughout Groote Eylandt. Similar communities are found right across North Australia.

Many people, including Aboriginal people, are convinced that the existence of some egalitarian Aboriginal community is a reflection of traditional values and practices when in fact it is not. The concept of community is one which is often used as a trigger for securing funding, and prominent and dominant families (especially the land owning families) may consciously use this concept for their own advantage and to the disadvantage of less powerful language groups and families. The problems associated with the concept of community are no better explained than by quoting an extract from an article by Christopher Anderson in the September 1990 edition of The Independent Monthly:

> "The problem with this "community" was two-fold. Although homogeneous at one level, Wujalwujal contains groups from different areas: "mobs" associated with the old permanent camps - and who are at constant odds with each other; the council structure which was eventually set up was wholly dominated by one group; community living was tense, close and difficult. Second, a community such as Wujalwujal with its present population of more than 300 people has little hope of ever becoming in any way self-sufficient within its concentrated land base(less than one square mile in the community itself). It is totally artificial in economic terms. In order to properly exist (ie, enjoy self-management for individuals and families), the community has to disband. Yet in order to get continuing funds from the state, it must stay as it is and demonstrate that it is a community (and go along with policies such as self-management). They have to continue the very conditions which lead to the problems.
>
> The assumption throughout the commission was that the lack of "self-management" for the Wujalwujal community was a vital underlying cause in the creation of the context of Billy Blanket's death. In this sense, the royal commission is merely another manifestation of the state that created the centralised settlement; the assumptions of community are the same as those interventions that created the problems.
>
> The existence of the "community" presupposes a non-Aboriginal presence. By definition, to be Kuku-Yalanji (and even this term itself is really an anthropological invention) is to be tied to a particular group of people. To live together with other groups as a "community" on one bit of land contradicts the nature of society here. For these people self-management or self-determination means not living in a community."

Anderson comments in his final paragraph:

> "The commission says that deaths such as Billy Blanket's will not occur if only we can solve the problems of the community he lived in. By contrast, I am arguing that the community itself, as an instrument and outcome of state control, is the real problem." (14)

To my knowledge there are no Aboriginal communities in the Northern Territory which reflect the homogeneity of tribal existence - with the possible acceptance of outstation communities.

Maggie Brady in her study "Heavy Metal: The Social Meaning of Petrol Sniffing in Australia" observes "Even if an Aboriginal community (settlement) is composed of people united by a common language and shared rights to land (which is certainly not always the case) it can still be riven by dissent between opposed family groups and individuals. Both Fred Myers (writing of Central Australia) and Nancy Williams (writing of Arnhem Land) have noted the absence of a concept of 'community welfare' an absence which can give the social environment an ego-centric quality (Myers, 1986; Williams, 1987)." (15)

To my mind many well meaning initiatives in Aboriginal communities founder because of a failure to recognize the implications of "community" and much of the enthusiasm for community justice programs overlooks many of these difficulties. Community consensus can be elusive or non-existent and in the context of our criminal justice system one must always bear in mind that "community" may often be part of the problem for an offender.

FAMILY AND AUTONOMY

As is well known Aboriginal kinship and totem relationship are the most important relation of any individual in an Aboriginal society. Personal rights, duties and privileges are all bound up with the idea of kinship and are the most important aspects of the way in which an Aborigine identifies him or herself. This placed a high premium on family solidarity. Aligned with this sense of family relatedness is the concept of autonomy which many writers tell us is in embedded in the Aboriginal culture to promote and encourage independence and survival skills.

Maggie Brady again observes in her study "Aboriginal social life is marked by an emphasis on the autonomy of the individual while at the same time stressing notions of relatedness between people: relatedness which requires constant outward expression through generosity, compassion and concern" (16) in a way which is very different from White society. There is an unwillingness to impose one individual's will on another. Young people in Aboriginal society are treated as autonomous individuals and learn from an early age that they have a wide range of freedoms. In the writer's opinion this explains in part the high level of young Aboriginal offenders and the often poor response to supervised release.

The high value placed upon an individual's rights not to be bossed by others together with an acceptance of independence co-exists contrarily marked by elaborate rules of conduct and high levels of conformity. This is aptly illustrated by Harris (1984):

> "M-, a Yolngu carpenter of about twenty-five years of age, had fixed the cabin on his family's twenty-foot boat. But all his brothers kept sitting on top of it and broke it again. He started to repair it the second time and put stronger timber in the frame, and he said, 'They always sit on it.' And I said, 'Can't you explain that it will break if they do?' And he said, 'No, they won't take any notice. We can't tell each other things like that.' The brothers would express their independence by sitting on the cabin roof, but the carpenter brother could not aggressively express his own individuality by adopting a leadership role." (17)

In the normal course of events people are able to balance these values so that autonomy and restraint are enacted in appropriate circumstances. There is thus locked deep within the traditional system of values a unthinkableness about aggressively directing or seizing another person. Each individual is autonomous and inviolate "for one adult to denigrate, publicly challenge or to lay hold of another either directly or through a kinsmen therefore constitutes an offence. Serious consequences will almost inevitably follow and if people, are drunk they can be widespread and catastrophic." (18)

The tension between these two strongly held values that of personal autonomy and that of social responsibility and affiliation - what has been called relatedness - undermines the common assumption that individual rights are sacrificed in order to maintain social harmony in Aboriginal societies.

The problem of autonomy/relatedness encapulates the problems often faced by traditionally orientated communities in their attempts to deal with alcohol related offences, property offences as well as young offenders who often express their individuality in anti-social ways.

By achieving a better understanding of the cultural processes of social control, how disputes arise in Aboriginal societies, the issues and interests which underlie them and the ways in which they are resolved, we are better able to determine our response to Aborigines within our criminal justice system.

LAW REFORM

The recent report of the Royal Commission into Aboriginal Deaths in Custody generally endorsed the recommendations of the Law Reform Commission as to the recognition of Aboriginal customary laws (Recommendation 224). The approach of the latter Commission was

> "Aboriginal customary laws should be recognised, in appropriate ways, by the Australian legal system (para 194).
>
> The recognition of Aboriginal customary laws must occur against the background and within the framework of the general law (para 195).
>
> As far as possible, Aboriginal customary laws should be recognised by existing judicial and administrative authorities,

avoiding the creation of new and separate legal structures, unless the need for these is clearly demonstrated (para 196).

The issues of the extent and method of recognising Aboriginal customary laws need to be considered separately from any arguments about the federal system (para 197).

Recognition of Aboriginal customary laws may take different forms, . . ." (19)

The Law Reform Commission recognized that there "is little doubt that in many communities unofficial methods of resolving disputes operate alongside the general legal system". (20) This has been my own experience and many police officers and correctional services officers who have served on communities report that police intervention usually occurs at the request of a victim or a family of a victim. There are many disputes which do not come to the notice of police in Aboriginal communities.

Most offences in communities are limited to two categories: property offences and violent offences. The former usually take place when youthful offenders either steal vehicles or break into residences or community buildings for the purpose of stealing food, alcohol and small amounts of cash. Offences of violence are usually associated with domestic or family disturbances.

Customary processes of dispute resolution have their limitations and often do not cover the whole range of disputes, conflicts and law and order problems - the obvious example is where a victim is a White Australian. I think that I speak for all magistrates in the Northern Territory when I say that in dealing with any Aboriginal offender we attempt to encourage the family or community to be involved but there are limitations, limitations which I do not believe are overcome by recognition of customary law or encouraging people to establish their own system of dispute resolution. In that regard I make the following observations:

1. Many of the offences allegedly committed on communities involve a victim who is not an Aborigine.

2. Many Aborigines involve the criminal justice system do not live in "communities" but rather in small towns or urban settlements.

3. The extent to which traditional values are important to an offender or victim is often difficult to determine and may not be of relevance to the offence, offender and/or victim.

4. The tradition of self-help in the traditional processes of dispute resolution is a matter of some concern if Aboriginal authorities are not subject to some control.

5. The problems created by the extent to which Aborigines are intergrated into the cash economy as opposed to the continuing patterns of traditional values.

6. The changed circumstances of Aboriginal existence and the new order of offences raise new problems on cohesion and co-operation.

7. A defacto system of dispute resolution exists alongside the general legal one.

I note that the Law Reform Commission observed that "there is only limited scope or demand for new official local justice mechanisms in Aboriginal communities". (Para 1009). Problems of law and order and Aborigines in the criminal justice system involve issues which extend well beyond the reach of our criminal justice system and while I am not complacent about the inadequacies of our present system I have reservations about community justice programs which have received the endorsement of the Royal Commission into Aboriginal Deaths in Custody.

The greatest potential for innovation and iniative in the writers opinion lies in the area of policing.

The initial point of contact between an offender and the criminal justice system occurs invariably with the intervention of police. When it is remembered that dispute resolution and social controls are affected within an Aboriginal community by the parties, their supporters and/or influential intervenors, it is both logical and culturally appropriate that personal contact of police officers involved in policing in communities can have the greatest impact.

Sensitive and timely intervention in a private disputation by police (who are not subject to family or kinship pressures) may resolve conflict to the satisfaction of all parties. Intervention to maintain public order can only reinforce that element of public interest in private disputation for which I have already referred.

An arrest and subsequent appearance in a Court perhaps months after an incident when it has been forgotton, can often be a totally artificial and irrelvant exercise in maintaining law and order. That there are limitations to police imposing social controls in culturally appropriate ways is acknowledged, but the apparent success of the Julalikari Council in Tennant Creek in establishing and maintaining a program of patrols in Tennant Creek, demonstrate what can be achieved. (21)

So far as the more effective operation of Courts in the Northern Territory are concerned, there are two matters which I believe need to be addressed. The first is the need to call evidence or adduce material relevant in sentencing Aborigines. It is my experience that very little evidence is placed before the court as to community opinions of the offender and the offence by police prosecutors. I am uncertain of the policy of the Director of Public Prosecutions and the experience of the Superior Courts. It is often quite inappropriate for defence counsel to provide this information. In that regard I fully endorse the Law Reform Commission's recommendation that:

> ". Existing powers and procedures to call evidence or adduce material relevant to sentencing in Aboriginal customary

law cases should be more fully used. These include in particular:

.. the prosecution's power to call evidence and make submission on sentence (para 526)
.. the use of pre-sentence reports (para 529)." (22)

The second point is the need to develop prosecutorial guidelines in relation to offences committed by Aborigines. The Law Reform Commission's recommendations are a useful starting point. These are:

"..
.. that an offence has been committed against the general law in circumstances where there is no doubt that the offence had a customary law basis;
.. whether the offender was aware he or she was breaking the law;
.. that the matter has been resolved locally in a satisfactory way in accordance with customary law processes;
.. that the victim of the offence does not wish the matter to proceed;
.. that the relevant Aboriginal community's expectations (or the expectations of each community, if there is more than one) are that the matter has been resolved and should not be pursued further;
.. that alternatives to prosecution are available, eg a diversion procedure;
.. that the broader public interest would not be served by engaging in legal proceedings (para 478)." (23)

CONCLUSION

I do not want to leave the impression that Aboriginal law and custom is ineffective and not capable of responding to current problems associated with the criminal justice system. Rather this is a contribution to the ongoing need for judges, magistrates and lawyers to be better informed, to be more sensitive about the special problems facing Aborigines.

The life of the Law is experience. This paper has attempted to discuss a small part of the daily experience of Aborigines in a way, I hope, that addresses the need to overcome "the arbitrariness the use of violence, the impatience and the bootish neglect of Aboriginal rules of privacy, decent conduct and respect for persons and authorities so often shown by the process of our criminal law". (24)

BRUCE MCCORMACK SM

28th June 1991

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(17) Stephen Harris quoted in Brady p. 105

(18)

(19) Report of the Law Reform Commission into the Recognition of Aboriginal Customary Laws Volume 2, p. 210

(20) Ibid paragraph 720

(21) Ibid paragraph 1009

(22) Ibid p. 217
(23) Ibid p. 215
(24) W.H. Stanner quoted in Volume 2 paragraph 835