



SELECT COMMITTEE ON SUBSTANCE ABUSE
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RECEIVED FROM:

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The Committee Secretariat,

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Following is my submission to the committee. This is an excerpt from my book

Crossed Purposes. The Pintupi and Australia's Indigenous Policy, UNSW PRESS 2001

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Law

I saw a dying community:

Dying spiritually - There is **very little of the** Aboriginal soul... no

Aboriginal power or structures. (*Between Two Worlds - Report of a World*

Council of Churches Team Visit to Aboriginal Communities in Australia

1991, 47)

Sometimes western intervention in Pintupi society is promoted as an unequivocal improvement because it is seen as eliminating something that is abhorrent to international sensibilities. Like many aspects of indigenous policy the West's version of 'justice' is assumed to be a universal, applicable to any social order, when it has really evolved within a particular tradition. Pintupi justice is not expressed in a formal structure of power, such as a council or law court or even mythologised elders, but is regulated in a system maintained by everyone, in which all are accountable, both in its observance and upholding. As with everything else in their society Pintupi justice works through relationships: justice is relationships satisfied.

Violence as punishment, that potent and persistent expression of Pintupi justice, can be contrasted with the stereotype of a brutal and anachronistic force described by Amnesty International as a violation of international human rights (Sheehan 1998, 14). Like so many aspects of Pintupi lifeways, violence is no aberration of a social order unable to come to terms with modern life. It is an ancient sanction with contemporary relevance for modern Pintupi.

In a confusion of mixed messages from the mainstream, Pintupi face accusations of either not controlling their own society, or going too far in using violence to exercise authority. Often the same outsiders who exhort them to act on problems like petrol sniffing recoil in horror when they do. Yet in a society made up largely of young people raised to prize individual freedom of action, a lack of powerful constraints and incentives to shared identity is a recipe for chaos. It is precisely the decline of ritual, lawful violence that breeds the uncontrolled variety reviled by both societies. When lawful violence is disallowed in favour of taking the path that least offends western society's sensibilities, it should not be shocked when, as Tatz (1990, 18) observes, indigenous Australians merely 'sit and watch disinterestedly, such hitherto punishable behaviours' (of rape and incest).

While it is often assumed by western society that indigenous people need to overcome violence in order to build a just society, violence as punishment is actually one of the few sanctions that make any sense to Pintupi. However, far from being difficult to eradicate, as it is often portrayed, punishment is actually very difficult for Pintupi to maintain because they have not delegated it to others, with offenders conveniently carted off to jails through largely anonymous forces. There is no Pintupi 'police force' to administer their own law, so everyone must make decisions for themselves and act accordingly. Every individual is a lawyer, judge and policeman judged in turn by everyone else. All Pintupi must take responsibility, not only for their own actions and those of their *walytja*, but also for inflicting just punishment on others.

Violence as law, with the involvement of dozens of people from different family groups, is often portrayed in press reports as merely riotous behaviour, something in need of control from the outside if necessary, for a well-ordered society to be possible. In fact, it is highly structured and not at all uncontrolled. Even in a heated response to murder, spearing and beating with clubs is not orgiastic but controlled by opposing *walytja*, who ensure both that justice is done and also that it is 'finished' forever at the time of punishment.

Those who are punished must be forgiven, and must forgive their punishers, because they are still living together in the same small society. Pintupi speak in astonishment about whitefellas who can publicly shake hands after an argument to signify that their fight is over, only to take up their differences again the very next day. Pintupi see public resolutions as finishing a fight between individuals and different *walytja*, who must co-exist and may, in the future, need each other. The marks of punishment are worn proudly by the one who took the payback without flinching and invited more of the same. This invitation is not just to show strength but to make sure that more was offered than was required so there can be no excuse for further revenge. As one man put it, When we see those scars (from spear wounds) we're happy'.

Western ideals are ill-fitted to Pintupi law, which applies to people rather than property, and does not allow for the concept of an accident for which no one can be blamed. This focus has produced a very different law. Even the passengers in a car in which a person has died are jointly held responsible, and must be punished for failing to warn the driver. A passenger who was injured in a vehicle accident in which the driver was killed refused to be evacuated to Alice Springs hospital because he wanted to 'tell the right story to relatives'. To not do so would have made him look even more guilty and invited greater punishment. When a man was killed in a drunken fight, not only was his attacker punished, but also those who had bought the grog because they were deemed to have contributed to his death, both by buying the alcohol and not acting quickly enough to save the injured man.

On the other hand, there is no 'hard law' when it comes to material goods. Young children can playfully damage property with impunity, and petrol-sniffing youths sometimes cut swathes of destruction through settlement infrastructure. As long as no one is hurt little is done, much to the astonishment and frustrated anger of whitefellas living on the settlement. As well, what is considered vandalism by western society can be a form of justice for Pintupi. The destruction of property is considered perfectly just if it resolves conflict between people, and the costs to material goods weigh very lightly in the human equation. For example, the complete destruction of a new video player by people fighting over it may be a perfectly satisfactory outcome for Pintupi, because the cause of the fight is removed and harmony between the protagonists reinstated. As Myers (1991) shows, 'burning the truck' does not contradict the shared identity of Pintupi and at times may be essential to it.

This focus of Pintupi law on people, rather than possessions, does not serve the interests of western institutions in their settlements well. The resultant lack of Pintupi support for their preoccupation with the preservation of property threatens to choke off the flow of resources from wary government bureaucracies. To counter this many Pintupi look to law enforcement by outsiders.

However, like so much grafted onto Pintupi society, the benefits of western law to a people practising their own customary law are not cost free. Pintupi deal with breaches of their law by physical punishment meted out swiftly by their fellows, the aim of which is to satisfy aggrieved relatives. Whitefella law is abstract, slow, cumbersome and often turns to sanctions that contradict important tenets of Pintupi society, and are therefore contested. For example, a man was forbidden by the courts to return to the settlement he had offended in. Many months later, when he was arrested for doing so, his relatives angrily claimed he had been 'sent to jail for visiting his mother'.

A law that prioritises the value of material goods above relationships legally sanctions shameful behaviour, even if it is maintained by outsiders. It is illegal in whitefella law to vandalise another person's vehicle, just because it is linked to fighting, or to beat a man who lives in the house of a dead relative, no matter that these actions break Pintupi Law, or how shameful not punishing would be:

If he goes back to that house all the people will go there *kuturutiarra* [with clubs]. The people will say 'What are you doing here? You shouldn't be here'. If he doesn't leave we'll hit him like this [demonstrating blows across head].

Both laws have merit in their context, but they are rarely additive and most often contradictory. Police officers can be important authority figures for youth and, as an authority external to Pintupi society, can be a valuable constraint on crimes against property and whitefellas. On the other hand, western law limits the reactions of relatives in carrying out customary punishment, even when this is not the intention. In western society there would be far less punishment if individuals had to administer it themselves to their relatives, and some Pintupi are also reluctant, punishing not because they want to but because it is shameful not to do so. A woman who was obliged to punish was ridiculed for merely telling the person off. People said 'That's wrong. That's not our way', and the shame forced her to punish properly. There would be 'too much talk' if she failed to fulfil her duty.

Given that Pintupi must carry out their own punishment, it is not surprising that the intervention of western justice provides the opportunity for a denial of responsibility on the grounds that the police should do it. A man may fail to fulfil his duty because 'I don't want to go to jail' or because 'we have whitefella law'. However, if customary law is not applied because of this, while the western legal system assumes it will be and either invokes 'community solutions' to a non-communal society or applies meaningless sanctions, there may be a shifting of responsibilities between the two and, ultimately, no law at all.

'Culturally-appropriate' intervention

After all, we have not developed accounting procedures that will evaluate, except in terms of money, the necessary social and psychological changes. (Davis et al 1977, 101)

Many outsiders visiting Pintupi settlements have declared over the years that a society that cannot even stop its own children engaging in petrol sniffing is surely in terminal decay. For those making that judgement the failure of their own western societies to control drug abuse is rarely a consideration. Moreover, there is usually a high degree of misplaced confidence from them that intervention programs in indigenous societies will be more successful than those instituted in their own.

From the 1980s, enlightened programs of intervention aimed to understand the recipient culture and work within it to control petrol sniffing. The Healthy Aboriginal Life Team (H.A.L.T) was to work hand in hand with families because they are, the culturally-sensitive reasoning went, the only valid authority system in indigenous society. H.A.L.T aimed to identify, and prop up, disintegrating family structures, to use the 'right' relatives in the kinship system to care for and control the petrol sniffers.

H.A.L.T was promoted as a positive system of support with families helping their own, and this struck an immediate response with indigenous audiences, who felt that at last a program of intervention understood them. Implicitly, petrol sniffing children were seen by these teams as neglected, and this also struck a chord in Pintupi settlements where children and teenagers are rarely blamed for their own actions, their families being held accountable by others for their behaviour.

However, petrol sniffing among Pintupi often gains momentum, not because of some catastrophic breakdown in a family system in desperate need of outside intervention to re-establish itself, but because of its continuing strength. The same 'neglectful' relatives who are assumed to 'not care' for the sniffers are ever willing to launch themselves into a frenzied public defence of their worst excesses, on a daily basis if necessary. The sight of exhausted relatives storming into community meetings and loudly protesting, to the point of physical violence if necessary, in order to defend their petrol-sniffing children from the slightest innuendo of wrongdoing, is not uncommon. In doing so Pintupi are 'holding' their families in the prescribed manner and, while they are concerned about petrol sniffing, they cannot stop giving unconditional support in order to control their children.

Petrol sniffing is not at all condoned, and parents often despair for their sniffing children, but ultimately Pintupi youth have the personal autonomy to engage in it, no matter what the consequences. While this autonomy is considered by many outsiders to be a central problem in petrol sniffing, many children of the West, subject to far more constraints on their personal freedom, also indulge in a great deal of drug use in their teenage years. *Walytja* is a system with a primary focus on total support, and through it the cultivation of self worth so, unlike many of their drug taking contemporaries in western society, petrol sniffers are still treated as valued members of their families. Their social rights are undiminished and, probably because of this, the vast majority remains socially responsible members of their own society, no matter how destructive they might appear to outsiders.

The H.A.L.T program eventually foundered, but since it was a fine sounding idea, apparently 'culturally appropriate' and well promoted by its non-indigenous founders, it continued to receive substantial funding for many years. However, its assets were rarely used for the benefit of substance abusers, but were assimilated to

the values of *walytja* as might be expected in an indigenous controlled program. While funding bodies complained

about this 'misuse', perhaps it was just as well, because intervention that legitimises and provides benefits to common-interest groups can be problematic when applied to self-destructive ones.