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'GALKA' DJÄMA' (SORCERY) AND ITS INCREASING USE.

This paper attempts to explain the role that sorcery is playing in the lives of **Yolŋu** (Aboriginal people of Central to North East Arnhem Land) and why this activity is on the increase. It also documents our opinion that the use of sorcery and the corresponding fears that it brings to **Yolŋu** could be reduced, if appropriate actions were taken by the wider Australian society through it's government to recognise Aboriginal Customary Law (A.C.L.).

Before commencing with the body of this paper, we wish to make clear that this is not intended as an exhaustive commentary on this subject. For a more general reading we refer the reader to Janice Reid's book, 'Sorcerers and Healing Spirits', A.N.U. Press, 1983. We point out however, that the specific matters raised in this paper are not covered in Reid's book.

SORCERY IS ILLEGAL

Sorcery is itself illegal in **Yolŋu** society and anyone found practicing it leaves themself open to punishment. Throughout history most cultures have practiced the art of sorcery at some time and similarly, it has been known and at times practiced within Aboriginal society, despite the fact that according to Aboriginal customary law it is illegal. Sorcery takes on many forms and these are documented by Reid in the above. Sorcery was traditionally seen as the final solution in instances where the law was not seen as achieving justice and where citizens took the matter into their own hands. In any society there are both law-abiding citizens and those who are corrupted by greed or are simply rebellious. So it has also been in **Yolŋu** society and some of these individuals would use sorcery to get their way outside the law. When and if they were found out, they would be severely punished.

Many old **Yolŋu** people are saying that the use of **galka' djäma** (sorcery) and the accompanying fears thereof, are clearly on the increase. This increase seems to be due to two main reasons. Firstly, the old men are saying that sorcery is being used as an alternative to **'dhägir'yun'** (to punish), so that the law can be reconciled. Some keepers of the law have secretly turned to contracting out punishment that should be applied by the law to **'galka'** (sorcerers). They have taken to these drastic and illegal

methods due to fear of the **Balanda** (non-Aboriginal) law. They know that to apply traditional **dhägir'yun** (to punish) would risk their own arrest by the police whilst the original law breaker would often go free because the wider Australian legal system may not recognise the original violation. Their belief is reinforced by the fact that in many instances in the past when traditional punishment has been applied, the keeper of the law has been brought before the Balanda legal system and imprisoned, whilst the original offenders who were being punished for violations of **Yolŋu** law, were often seen by the **Balanda** system as victims.

ATTITUDES TOWARDS BALANDA POLICE & PRISON SYSTEMS

From the perspective of **Yolŋu**, **Balanda** law and its legal institutions such as the police and prison systems are being used in a way that is not bringing about justice. Many of those who break traditional law are looking to the **Balanda** system for protection. If a **Yolŋu** person stabs another **Yolŋu** for example, then the one who committed the crime often runs to the (**Balanda** system) police for safety. From the viewpoint of **Yolŋu** society, the **Balanda** legal system is offering protection to the law-breaker and denying their society the opportunity to apply their own law. In the same way, when young petrol sniffers who continue to break into buildings and destroy property are asked - 'Why do you keep doing this? Aren't you frightened of the law and being put in prison?' Their response is often that they are not frightened; that they would be pleased if they were sent to prison, where there is plenty of good food, televisions, games to play and so on. Because their relations do not want them sent away, the young sniffers are able to play on this fact and use it as a threat to their relations so that they are able to continue their wrongful behaviour.

Again we see evidence that where the **Yolŋu** keepers of the law are not in control of imposing punishment on law breakers, then the whole **Yolŋu** community feels that the maintenance of law and order is out of control. Whereas in traditional **Yolŋu** society, the law keepers aim at imposing punishment in such a way and form so that the law and order of their communities is maintained in the long term, and a code of law is maintained that leads the people to discipline of mind, body and spirit.

However whilst many **Yolŋu** see imprisonment for short periods in a positive way, when someone is jailed for a long term it is an entirely different matter. The high levels of fear and the hopelessness that **Yolŋu** feel when they are serving long term sentences, leads them to despair and in not uncommon cases, to suicide. In most long term cases, the offender would much prefer to be punished by their own people. These specific areas of how **Yolŋu** view the **Balanda** legal system and its institutions, are yet other areas that need more indepth research.

THE TRADITIONAL EQUIVALENT OF INCARCERATION

Yolŋu never had permanent buildings traditionally, which would enable them to incarcerate a person. So they adopted a form of incarceration that suited their social organisational structure - the use of the spear. The spear was used predominantly as punishment in two areas. Firstly for crimes demanding capital punishment (we note here some countries in the western world have used and even continue to use hanging, the electric chair, firing squads, guillotine and chemical injections causing death, as forms of capital punishment). Secondly, spearing of the thigh was used for less serious crimes that nevertheless demanded public humiliation or some form of incarceration of a person. This punishment was highly humiliating and most effective in restraining a person until the wound healed, whilst at the same time providing public education about the law, order and justice.

Use of the spear as punishment has always been seen as conflicting with **Balanda** law, even before 1967 when **Yolŋu** were not regarded as citizens and covered as such by that law. It was actually these reactions to the use of the spear in earlier years, that resulted in the **Yolŋu** law keepers coming to the conclusion that they would have to find another way of maintaining law and order, that was hidden from the **Balanda** law enforcers. In the earlier years when missions and settlements were very isolated and the **Balanda** superintendents' or patrol officers' activities were limited to relatively small areas of land, it was much easier for these punishments to escape the knowledge of the **Balanda** law. If someone went missing, it was merely said that they had gone on a long hunting trip or to visit relations. Or if someone was to be punished by **Yolŋu** law they could be forced to go on a so-called fishing or hunting trip and thereby could be taken outside communication with the **Balanda** bosses. As some missions and settlements prohibited certain forms of ceremony, it was therefore almost expected by **Balanda** that the **Yolŋu** would 'go bush' occasionally. This also made easier the maintenance of the **Yolŋu** law by the law keepers and therefore the maintenance of their society without the intrusion and prevention by **Balanda**.

However as the forms of communication improved, these areas became less isolated and together with the more thorough record keeping procedures being practiced, this resulted in **Yolŋu** movements being more easily monitored. Correspondingly, it became much more difficult for the keepers of **Yolŋu** law to do their job. The ways they could punish law-breakers was reduced more and more, yet at the same time their responsibility to **Yolŋu** law from their perspective was not. So they turned to adopting a form of punishment that even the people see as bad, that is, sorcery. From the peoples' point of view, if the law keepers are prevented from reinforcing the law by punishing offenders, this will inevitably lead to anarchy and a lawless society.

Sorcery is increasing and we believe will continue to do so, until A.C.L. is given recognition and the **Yolŋu** law keepers are given a major role in determining what are culturally appropriate forms of punishment and protection.

THE TRADITIONAL FORM OF LAW COURTS

It is an important fact that the decision to impose punishment was not traditionally made by individuals, but rather through the correct chambers of law. Furthermore, that the traditional law courts had many elements that can be compared to the western law courts. This in itself is an important area which needs to be documented more fully, however at this stage we provide a very brief summary of the procedures of the traditional law courts, which nevertheless is sufficient to evidence the similarities:

(a) The accusation that a person has broken the law is made by the executive arm of the government (refer A.R.D.S. Information Paper No. 2) in a similar way to a public prosecutor.

(b) A court session or chamber of law is proclaimed and established by the '**ŋurru-dawalaŋu mala**' - the selected representatives of the **bäpurru** (clan). These people are also known as the '**ṉapuŋga**' (the middle people).

(c) These **ŋurru-dawalaŋu mala** will call leaders from a number of specific relationship groups to the accused, to act in that person's defence.

(d) The session will commence with the prosecutor making the accusation before the **ŋurru-dawalaŋu mala**.

(e) Then those called to the person's defence will speak. Talking will continue until the **ŋurru-dawalaŋu mala** know they have the full story. They will then retire to discuss the matter in secret.

(f) Once they have reached a decision, they return to the gathering and announce their findings and the punishment/s.

(g) The punishment is then carried out by the prosecutor from the executive arm of the government. Alternatively, the prosecutor may contract out the job of punishment to another person whom they know is skilled in that area.

(**Balanda** and even **Yolŋu** in recent years have used words like '*payback*' to describe the way **Yolŋu** have decided on punishments traditionally. However it is clear from even this minimal insight into the **Yolŋu** legal system, that such terms are a gross

over-simplification and this has led to an almost complete misunderstanding of the **Yolŋu** legal system.)

THE NEGATIVE EFFECTS OF SORCERY

The increased use of sorcery is having many negative side-effects. Firstly, as it is still regarded as illegal, it therefore leads to lawlessness. Secondly, it is leading to confusion amongst the people about the cause and effects of many things introduced to **Yolŋu** communities over the last 200 years including disease and sicknesses, new foods, substances of abuse and even technology such as in the form of vehicles. The harmful effects of these introduced things, even to the extent of death by accident, are being confused with punishment in the form of **galka' djäma** (sorcery). This has far- reaching and significant effects, particularly in the areas of health, and safety in both public and occupational areas. The peoples' confusion about the cause of death or the injury (assuming the **galka'** to be the cause) leads to them not taking responsibility for sickness, disease, substance abuse, or things like mechanical safety and driving habits. They assume that all deaths are caused by **galka'** and therefore that control of their own life, health and safety is to that extent out of their hands. This fact alone is rendering many of the educational health programs introduced in these communities as largely ineffective.

A third negative effect results from **galka' djäma** being relatively non-discriminatory as to whom takes the greatest burden of the punishment. A young man from a particular clan for example, breaks traditional law in such a way that he should receive the capital punishment of death by spearing. Yet this form of punishment can no longer be used. All his clan know he should be punished and are aware that the executive arm of their law might have to contract out the punishment to a **galka'** (sorcerer). The whole clan is also aware that in order to satisfy the law, if the culprit has returned to a homeland centre or somewhere where it is difficult for the **galka'** to get him, then the **galka'** might pick on any member of his close family. So his whole family lives in great fear that they or other loved ones may have to bear his punishment (and the fear in this area is increasing). This also leads to much time and energy being spent on speculation as to whether the **galka'** is to blame when a family member becomes sick due to disease or substance abuse, or if they're involved in an accident. It is just a matter of time before every family group on a community will have had an incident that they know needs reconciling.

The confusion and fear is compounded even further, due to people assuming that the family which under traditional law should execute the punishment, will have contracted for a **galka'** to carry that out, whether they have in fact done so or not. Then if someone from the family of the offender becomes sick from disease or substance abuse, or is hurt or killed in an ŋaccident', it will be assumed that the original executor's family was responsible through letting a contract to the **galka'**. As

sorcery is illegal under **Yolŋu** law, the family of the accused who have had a member take ill or in some way been hurt, can in turn seek to have the law reconciled. This whole process snowballs to a point that every death and even suicide is blamed on **galka' djäma**, whether such activity is going on or not.

JUSTICE MUST BE SEEN TO BE DONE

So for all these reasons, we are reminded of the importance to these people of the principle reflected in the old saying- 'justice needs not only to be done but to also be seen to be done'. The old men are saying that everyone is now living in fear of **galka' djäma** (sorcery) and that this is the direct result of them not having the authority under the wider Australian legal system to apply the appropriate punishment. If **Yolŋu** law keepers were to be consulted and their advice taken as a major factor in determining the punishments of law offenders, then in some instances it may result (though not wanting to pre-empt any debate in this area) that what they perceive to be the most ŋculturally appropriate' form of punishment today, is in fact imprisonment. For some of these old men are clearly saying that whilst traditionally the form of capital punishment demanded for very serious crimes was death by spearing, today they speak more of some form of imprisonment. However in many cases not demanding capital punishment traditionally, a culturally appropriate form of punishment may be other than that which would be prescribed by the current **Balanda** legal system. In making these decisions, the **Yolŋu** law keepers would take into account the non-fearing attitudes of some law breakers towards **Balanda** prisons and on the other hand, the overwhelming sense of hopelessness felt by **Yolŋu** serving long term sentences. The inherent inadequacy in the wider Australian legal system as it now exists, is that the total control of this area of decision making lies with **Balanda**.

It is our hope that traditional **Yolŋu** law can be taken seriously and treated with respect, so that justice can be seen by the people to be done and as a consequence, these increasing cycles of fear and lawlessness broken.

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