The Wentworth Lecture
Aborigines and policing: Aboriginal solutions from Northern Territory communities

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In the Wentworth Lecture this year, I have chosen to discuss relations between Aborigines and police and to highlight some of the attempts at solutions which have been initiated by Aboriginal people. The aims and often the outcomes of these Aboriginal-initiated community policing and justice mechanisms have been to achieve law and order within the Aboriginal community and to improve the generally poor relationship between Aboriginal communities and the Australian institutions.

In 1983, I examined Aboriginal and police relations in parts of New South Wales (Langton 1983). I wrote then, and submitted to the Australian Law Reform Commission, in respect of forms of Aboriginal swearing and fighting as customary law practices, that

> there is an urgent need to bring a sense of larger rationality to the problem of Aboriginal dispute-processing styles in conflict with the dominant and conflicting Anglo-Australian legal system. The possibilities for this suggested by the discussion papers of the Australian Law Reform Commission seem the most likely to succeed in reducing the Aboriginal arrest and imprisonment rate. In this respect anthropological inquiry may assist in refining the specific kinds of knowledge required by legislators and Aboriginal people to establish legal structures and guidelines to deal properly with this problem. (Langton 1983, 81)

I wrote then, in relation to the way in which the Aboriginal population is treated in the Australian criminal justice system:

> the question remains: should Aboriginal people be penalized by the Anglo-Australian legal system for responding in adverse conditions to two different forms of cultural knowledge and consequent action in order to achieve favourable outcomes for themselves and their own? The answer from an anthropological point of view is that the legal penalties are not only irrational in their own terms, but as well misinformed and ethnocentric habits or codes which the police and judiciary impose for the ostensible purpose of maintaining 'law and order', defined in white terms, with little or no regard for Aboriginal notions of legality and appropriate social behaviour. (Langton 1983, 88–89)

Since that time, Aboriginal communities in the Northern Territory have experimented with various ways of overcoming their problems in the criminal justice system. Most of these have been successful. I should point out, however, that with the exception of the Galiwin'ku Community Justice Program, under review by the Northern Territory government, and some Aboriginal fostering and adoption principles, none of the recommendations of the Australian Law Reform Commission under its terms of reference dealing with the recognition of Aboriginal customary law, have been addressed by

the federal or Northern Territory government. From 1989 to 1990, I carried out research for the Royal Commission into Aboriginal Deaths in Custody as Head of the Aboriginal Issues Unit in the Northern Territory. What I found in 1983 was confirmed in 1990: cultural and social imperatives shape Aboriginal and police relationships as much as do the impact of history and the legacy of racism and inequity which Aboriginal people endure more than 200 years after the first fatal impact of British settlement.

The Royal Commission into Aboriginal Deaths in Custody was the most thorough inquiry in the history of Australia into the nature of the treatment of Aboriginal people in the Australian criminal justice system and in other Australian institutions. In 1992, almost a year after Commissioner Elliott Johnston QC presented the five-volume national report and the regional reports (Australia 1991), government representatives, leaders, media and other commentators continue to debate Aboriginal and police relations largely within the terms of the traditional Australian racist discourse. For example, a retired New South Wales magistrate attributed the problem recently in the *Sydney Morning Herald* largely to what he perceives as Aboriginal requests for handouts. He clearly had not read the Commission's report, or if he had, had not comprehended its message. A respected current affairs presenter on an Australian Broadcasting Corporation television program asked the Prime Minister of Australia what he would feel if he had to walk with his family through a park full of drunken Aborigines. Likewise, it was clear to me that this representative of the media had not read the report, or had not comprehended it.

There have been many ill-founded complaints about the Royal Commission, probably more vociferous and more frequent than about any other royal commission. On the question of the cost of its operations, it has become clear to me that, if there were ever a question of waste of public resources, the real waste is that which has occurred a year after its national report was tabled. That is, the recurring evidence is that few, if any, of those people who have commented on Aboriginal police relations in the recent controversies widely reported in the media, have read the five volumes of the national report. This would also appear to be the case in Western Australia where amending legislation which will mostly affect Aboriginal youth offenders has been passed in that legislature. According to various reports, the legislation contravenes standards of human rights set out in United Nations conventions which Australia has ratified. Since the national report was presented to governments almost a year ago, it is also the case that in at least some jurisdictions, Aboriginal arrest and imprisonment rates continue to increase above the already alarming rates.

In 1990, I reported to Commissioner Elliott Johnston under the terms of reference provided to the Aboriginal Issues Units established as part of the Royal Commission into Aboriginal Deaths in Custody (Langton et al 1990). My report stated, among other things, that Aboriginal community policing and justice mechanisms have been successful, and that they are examples of measures which can be taken to rectify the situation of Aboriginal people as the Australians most represented in police cells, before courts and in prisons, despite being a minority of 2 per cent of the population. One important outcome of such projects in the Northern Territory has been to improve relationships between Aboriginal society and the Australian criminal justice system. Because of the continuing racist discourse in which the Aboriginal position in the Australian criminal justice system is discussed, and because of the extent of misinformation, or disinformation, in the current debates on these questions, it is important that the solutions which Aboriginal people have devised become a central part of any discussion which purports to lead to improvements. Thoughtful, experienced police are as anxious to find solutions as Aboriginal people.

The examples which I discuss here of Aboriginal policing and dispute-processing are from the Northern Territory. There are, or have been, Aboriginal police and court systems imposed by state governments in Western Australia and Queensland. Until the amendment of the relevant legislation in Queensland in 1984, the Aboriginal courts on the then Aboriginal reserves in Queensland were considered by members of the International Commission of Jurists to be in contravention of international human rights standards in respect of courts and related matters. The powers of the Aboriginal police in Queensland, in 1991 still not part of the Queensland Police Force, require attention in respect of their training and the extent of their powers. Like the Northern Territory, there is in parts of Western Australia an Aboriginal police aide scheme. However, I confine my comments here to the Northern Territory system, with which I am familiar.

It is important to understand how bad the situation is for Aboriginal people in relation to the Australian criminal justice system, or how bad it was at the time that the Royal Commission presented its national report in 1991. In some respects, since then, the situation

has worsened. The major findings of the Criminology Research Unit of the Royal Commission showed that, when allowance is made for age and the relative representation of Aborigines in the Australian population, it was found that Aboriginal people died in police custody at a rate more than 40 times the rate of non-Aboriginal people. The alarming Aboriginal death rate is explained, almost entirely, by the over-representation of Aboriginal people in police custody. Other findings showed that substantial differences exist between the states and territories regarding rates of deaths in custody, with the Northern Territory having the highest ratio of deaths to population. Suicide and other self-inflicted injuries were the most common cause of death reported, with deaths by hanging accounting for 95 per cent of all reported suicides. The average length of time that people had been held in police custody, up to the time of death, was 15 hours. In 1987 a dramatic increase occurred in the number of deaths among both Aboriginal and non-Aboriginal people (Biles, McDonald and Fleming 1989a).

In contrast to the rates of deaths in police cells, it was found, when allowance is made for age and the relative representation of Aboriginal people in the Australian population, that Aboriginal people died in prison custody at a rate nearly 13 times the rate of non-Aboriginal people. Other findings showed that the average age was 34 years with the age of death for Aboriginal people being lower (Biles, McDonald and Fleming 1989b). Another finding shows that the death rate for Aboriginal people over 15 years in non-custodial corrections was for 1987 and 1988 22.6 per 100,000 compared to 3.0 per 100,000 for the same age group in the community (Fleming, McDonald and Biles 1990).

In 1988, Aboriginal people made up 29 per cent of police custodies with substantial differences existing between the jurisdictions in the Aboriginal custody rates. Aboriginal women were heavily over-represented comprising nearly 50 per cent of the female custodies but less than 1.1 per cent of the national adult female population. The mean age of people held in custody was 28 years. Drunkenness and 'break enter steal, fraud and theft' were the most common offences leading to arrests, with Aboriginal people being over-represented in good order (including drunkenness) and assault offences only. Aboriginal people were in custody significantly longer than non-Aboriginal people (McDonald, 1990).

For the years 1980–89, the mortality rates for Aboriginal people in *police custody* are far higher than those of Aboriginal people in the community, whereas the rates for Aboriginal people in *prison custody* are somewhat lower than those of Aboriginal people in the community. In other words, a protective factor exists with regard to prison custody, but not with regard to police custody (Thomson and McDonald 1991).

As at 30 June 1989, the Australian adult Aboriginal imprisonment rate was 1464.9 per 100,000 compared with the equivalent rate for non-Aboriginal adults of 97.2 per 100,000. The Aboriginal rate was thus shown to be 15.1 times higher. As at 30 June 1987, it was found that Aboriginal people were over-represented in non-custodial corrections by a factor of 8.3, considerably lower than the level for prisons. It has been speculated that this difference may be due to a belief by some judges, magistrates and parole authorities that Aboriginal people are either less able or less willing to comply with the requirements of non-custodial correctional orders than are non-Aboriginal people (Biles 1990).

The question which must be asked, knowing what these figures tell us is: how do we stop the police in the various jurisdictions of Australia from arresting Aboriginal people at these extraordinary rates?

The governments are presently preparing to respond to the reports of the Royal Commission into Aboriginal Deaths in Custody. If the government responses ignore the Aboriginal solutions which are working, there is a real possibility that the presently alarming situation will get worse.

Finding solutions to the problem of arrest rates is only part of the answer, of course. Urgent improvements are required to lower the ill health and mortality rates of Aboriginal people, and especially the levels of alcohol misuse among a minority of the Aboriginal population. There must be improvements in the levels of inequity in employment, housing and education, as well as in other areas. The recommendations of the various regional reports and the national report address these problems and make hundreds of recommendations. They emphasise the role of Aboriginal decision-making and service delivery in solving these problems.

Aboriginal initiatives in community policing, education and crime reduction

What has been the response of Aboriginal people to their experience with police? Throughout Australia, Aboriginal people have become severely disenchanted with the police systems and practices. To overcome the problems perceived in a range of Aboriginal communities in the Northern Territory, Aboriginal leaders and community workers have established and proposed a range of community-based schemes. These include

community policing and justice mechanisms; curricula in schools to educate Aboriginal children about the police and court systems; and strategies for crime reduction, especially through alcohol reduction and education.

In the past, non-Aboriginal society and its institutions, in this case the police, have failed Aboriginal people in solving the problems of alcohol abuse, anomie, alienation and the resultant crime, vandalism, domestic violence, rape, assault, homicide and affray. Aboriginal people have perceived that the political expectation of the police in relation to the exercise of their duties among the Aboriginal population has not been to achieve law and order in Aboriginal communities but to achieve a range of vaguely understood, and probably impossible aims, to satisfy the demands of the white population. These demands can be seen to be the legacy of over 200 years of history, throughout much of which the police were an army of occupation. Terms such as 'dispersal' and 'pacification' arise repeatedly in Australian history. They are euphemisms for the physical destruction of Aboriginal people and control in various periods and in various regions in the history of white colonisation. In many parts of Australia still today, it appears to Aboriginal people that the expectations of the police in relation to Aboriginal people have changed only in respect of the extent of force used and the tactics used. In 1989, for example, an Alice Springs alderman publicly suggested that the police should use police dogs against Aboriginal people camping in the Todd River.

Aboriginal people in the Northern Territory have consistently raised the problems created for them and their communities through the interaction and conflict of Aboriginal customary laws with the Australian law. The issues have been recognised and raised repeatedly for well over a decade, by Aboriginal people, by representatives of their organisations, by the Australian Law Reform Commission and recently by the reports of the Royal Commission into Aboriginal Deaths in Custody. The unavoidable conclusion is that constructive changes in the interactions of Aboriginal people with the criminal justice system throughout much of Aboriginal Australia will occur when there is legislative and other kinds of recognition of Aboriginal Law and indigenous dispute-processing mechanisms from police officers, magistrates, legal counsel and others.

At least one measure taken by Aboriginal people against the unilateral intervention by police in community affairs began back in the 1970s. I turn now to the community justice project at Yirrkala, one example of Aboriginal action to improve the situation with the police.

The community justice project at Yirrkala

Yolngu leaders as members of the community council at Yirrkala developed over a number of years a system for dealing with police and magistrates. Their most vital concern was 'the unilateral intervention of police in Yolngu disputes' (Williams 1987, 233). By 1976, the council of Yirrkala, the Dhanbul Association, had incorporated as a business and trading association. When this became the Community Council, the annual election of officers and members became a problem for the traditional leaders of the Yolngu clans. The clan leaders used a number of constitutional devices to ensure that membership and representation accorded with Yolngu principles of authority and decision-making.

When disputes arose, they were dealt with by traditional Yolngu means, and only involved members of the council in terms of their responsibilities (or liabilities) as kin in any particular case. The leaders also met to consider matters of social control which had been put to them by members of parliamentary committees and the Law Reform Commission.

Dr Nuggett Coombs wrote a proposal to the Australian Law Reform Commission when it was investigating the recognition of Aboriginal customary law. His proposal formalised the system developed by the Yolngu clan leaders as a community justice mechanism. Dr Nancy Williams wrote:

> The leaders attempted to maintain their authority by asserting their jurisdiction over 'little trouble' and by proposing a number of procedures for acting jointly with the police. The Council's aim was to have the police function as adjunct to their own authority, rather than to create mutually exclusive jurisdictions. When trouble arose they wanted police to attend their meetings at their invitation, and they wished to remain involved in any matter that concerned a Yolngu person as prisoner, defendant or witness. These aims were consistently expressed through the succession of council structures that came into existence during the ensuing fifteen years. (Williams 1987, 233)

Dr Williams lists the essential criteria of community justice mechanisms which are met by Dr Coombs' proposal:

> The viability of Aboriginal community justice mechanisms depends on Aboriginal autonomy. At the most basic level this means that police and other Australian law enforcement agencies will not intervene unilaterally in offences involving Aborigines, but will intervene at the invitation of Aboriginal community

> leaders. They will keep the leaders involved at all stages of dealing with a community member charged with an offence if the matter is dealt with outside the community, and within the community will act to support the authority of community leaders... Where Aboriginal communities suggest mechanisms of articulation of joint operation with Australian law enforcement agencies, these must be seen as means of providing support for Aboriginal authority, not of superseding it. (Williams 1987, 237)

During the work of the staff of the Aboriginal Issues Unit of the Royal Commission from 1989–90, it became clear that other communities had been experimenting, and relatively successfully, with similar community-based projects to resolve the problems of over-policing and inappropriate policing. At Tennant Creek and Elliott, two small towns in the Northern Territory, Aboriginal elders had begun voluntary community policing in Aboriginal residential areas on special purpose leases within the town boundaries.

Tennant Creek: the Julalikari Council Patrols—community policing by Aboriginal people

The Aboriginal community at Tennant Creek had attempted to overcome a number of problems with police and policing by establishing Council patrols which attended disturbances in the camps at night and which attempted to resolve conflicts at morning meetings in the camps. The Julalikari Council insisted that people should bring their complaints to the councillors on patrol, rather than the police, and that the police should not attend disturbances without the presence of councillors to explain the problem to them.

The initiatives of Aboriginal people in providing their own policing, whether at Tennant Creek or Elliott, where police cooperate with the Aboriginal councillors, or in other communities, where less formal and often traditional policing and dispute-processing takes place, are evidence of the extent to which Aboriginal people are dissatisfied with the conventional police system and its practices. (In particular, the involvement of Aboriginal councillors in voluntary policing of their communities, and their preparedness to use their own vehicles and money to patrol the streets and camps every night, points to their dissatisfaction with the policing in these communities.)

The councillors stated that the main factors in Aboriginal offending included alcohol, the disrespect of Aboriginal youth and the white community for Aboriginal law, and the inadequacy of essential services, alcohol rehabilitation services, and general standards of living in the community. They were concerned that white police did not understand the social and cultural circumstances with which they were dealing when they intervened in disturbances on Aboriginal town leases. They were particularly concerned that the police were used by protagonists on one side of a dispute against the other family or faction in the dispute.

The Julalikari councillors were attempting to resolve conflicts in an Aboriginal way, rather than having the police simply arrest a person or persons, sometimes the wrong person, without solving the problem or problems which had contributed to an open dispute apparently requiring police attendance. The Julalikari councillors, most of whom are elders, were able to speak to Aboriginal people and reprimand them with success. Police reprimands may not be successful in some situations, especially those involving domestic violence. The use of Aboriginal languages in these patrols made an enormous contribution to their success.

Councillors worked with their constituents on their night patrols to diffuse arguments and prevent disturbances. Town camp residents did not call police themselves. They called the Council to attend a dispute and if residents felt that police were required, the councillors called the police on their behalf. This meant that heavy-handed police surveillance was minimised, and that police attending complaints were met by councillors who explained the problem.

In the morning, when intoxicated people had sobered up, meetings were convened in the town camps by the Julalikari Council to bring about resolution of conflict between disputants who had caused disturbances during the night. The calling of offenders to account before a meeting of residents by the Julalikari councillors in the community was clearly a much more effective way of dealing with minor law and order problems than the rotation of intoxicated people through the 'drunk tanks' under protective custody or on minor charges through the police cells and courts.

This program is a clear demonstration, in relation to minor offences, that police practices, particularly their readiness with Aboriginal people to proceed by arrest and protective custody detention rather than cautioning or summons, can be replaced by Aboriginal community policing. The program demonstrates how to achieve law and order in Aboriginal communities where police action has failed. For example, in one case, an argument between two young men on the main road was successfully diffused by the councillors, as explained by one woman elder on the Julalikari Council:

> The old get sometimes hit by their sons and daughters... old hit young too...but police is only called for the young offenders, the old sort their problems out within the family. (Langton et al 1990, 440)

Alcohol misuse and intoxication, however, requires the Council to call the police sometimes, even though it would prefer not to, as explained by a woman elder in another case:

> One old man who annoyed several neighbours during the night at Marla Marla was taken to the Dry Out Shelter (or Sobering Up Shelter) by police whom the Councillors had called upon the request of Marla Marla residents. (Langton et al 1990, 440)

In 1989, the Inspector of Police at Tennant Creek formed a Domestic Violence Committee and attempted to involve representatives on the committee in working together with the police with new legislation on domestic violence which enabled police to remove offenders from homes and detain them for four hours. He had invited the Julalikari Council, the Central Australian Aboriginal Legal Service, Anyinginyi Congress, the women's shelter, the Tennant Creek hospital and other bodies to send representatives to the committee. He reported at a meeting in 1990 that in the previous two months, of the 162 disturbances reported to the police, over 50 per cent concerned incidents of domestic violence and 95 per cent of them were alcohol-related. Many of the reports were generated by Julalikari patrols, he said, and their contribution had increased the disturbances reported to police considerably.

This increased reportage of domestic violence cases to the police by the Council patrol demonstrates that the law and order problem with which Aboriginal people of Tennant Creek are concerned is not the array of minor offences for which most Aboriginal people are arrested, but the domestic violence in the town camps, which is dangerously exacerbated by alcohol misuse. Fortunately for the Tennant Creek Aboriginal communities, the Inspector of Police responded by recognising the real law and order problems of the Tennant Creek community. It seems hardly necessary to say that domestic violence is rife in the non-Aboriginal community as well.

In 1990, it was a high priority of the Julalikari Council that their night patrols meet with success. In 1992, the Julalikari Council patrols continue to achieve success in confining arrests to situations which are perceived by Aboriginal residents of the town as the real law and order problems.

Community policing by the Gurungu Council at Elliott

Gurungu Council at Elliott, a two-hour drive north of Tennant Creek, had followed the lead taken by Julalikari Council and had also instituted Council night patrols. As well, the Council had been working toward establishing rules or laws for camp residents to fill the vacuum left by the partial displacement of traditional laws by the largely irrelevant body of law enforced by the police.

Gurungu councillors explained it in this way to their constituents, their fellow community members and kinsfolk:

> We'll have meeting on Friday to make council rules. If you don't like rules, you say so. We not flash. We trying to keep this place going good. You all have to obey council rules. You have to tell us if rule is no more good one. At the moment, if you agree with that rule you got to obey it. You can't say it no more good one afterward. If you mob fight at night, at next day you gotta finish it up next day. No good going to pub fighting in public area—it's dangerous. That's one of the rules.When they drunk, one person fight. No good. You gotta fight sober. You gotta learn to drink properly like kadiya (white people). Say it to our face. Don't say it behind our back. We gotta make it hard. That's the only way we can help our people. What if you killin that man dead, what you gonna do then?
> Punishment is going to be Aboriginal way in camps, not police. We got rubbish in camp. They can clean up camp. Aboriginal way so strong. When they go to court and get punishment they have to work in town, not in camp. We want them to work in camp, in Aboriginal way (Langton et al 1990, 441)

The elders made it clear to their constituents that they were to bring their problems to the Council first, not to the police:

> If people make trouble they have to see Council, not go to police. Council goes to police. People to complain to councillors, not police. Council patrols at night. (Langton et al 1990, 441)

The drain of already limited personal resources among the elders was one of the problems they faced, explained by one elder:

> One bloke was using his car to run around, using his own money for petrol. Other people should help. [The council president] should be using council truck, not his own vehicle. (Langton et al 1990, 441)

This personal generosity and contribution to the project demonstrates the elders' commitment and perception of need to improve the lot of their fellows with the police.

When a Commonwealth funding body indicated that it would not be able to fund this scheme, the senior police officer in Tennant Creek with responsibility for this area,

wrote supporting their need for funding.

Community policing extends to Alice Springs and Yuendumu

Inevitably, when other Aboriginal communities heard of the community policing at Tennant Creek and Elliott, they rapidly initiated their own schemes.

In Alice Springs, the major township in Central Australia, Aboriginal people in the town largely reside in Aboriginal special purpose leases governed by an Aboriginal local council called Tangentyere. A scheme was established in December 1990 involving male and female Aboriginal participants in the night patrol. At the present time, the scheme is enormously successful from the point of view of the town camp residents. Senior police in Alice Springs seem to be pleased with the outcome. The only government funding is for one coordinator position, some administration costs, T-shirts, CB radios and jackets, first aid, and running costs for vehicles for patrollers. Most patrollers are not paid for their work. A minority are paid from Community Development Employment Project funds. Increasingly, youth have become involved in the project, leading to an increase in their self-image and self-esteem, and community cohesion. Aboriginal leaders continue to set an example and provide inspiration to the program. The Aboriginal 'Beat the Grog' program in Alice Springs has also provided strength and inspiration to the community policing project.

At Yuendumu, a group of women elders initiated the Yuendumu Night Patrol in April 1991. In September, when I discussed it with them, they told me that they had dramatically reduced domestic violence and vandalism. They had bought

Plate 1
Geoff Shaw, General Manager of Tangentyere Council and Northern Territory Assistant Police Commissioner Southern Region Andy McNeil sign the agreement between Tangentyere Night Patrol and the Northern Territory Police, Alice Springs, 7 October 1991.

Plate 2
Members of the Tangentyere Night Patrol and the Northern Territory Police at the ceremony to sign the agreement between Tangentyere Night Patrol and the Northern Territory Police, Alice Springs, 7 October 1991.

uniforms out of their own pension incomes and had the words 'Night Patrol' embroidered onto the pockets. They carry their traditional fighting sticks, as a symbol of their traditional authority, which is still held in high respect.

Innovative use of the Northern Territory Police Force by a small community in Western Arnhem Land in controlling alcohol misuse is yet another example to the rest of Australia of how Aboriginal people are prepared to solve, not just the problems which Australian policing presents, but the problem of alcohol misuse as well.

Community involvement of the police at Gunbalanya

In Western Arnhem Land, at Gunbalanya, formerly called Oenpelli, location of one of the former Anglican missions to Anrhem Land, the community established a canteen, licensed to sell alcohol, but with strict controls. The police have been involved in the punitive measures used to prevent alcohol-related breaches of club rules and community law and order.

Sale of alcohol at a store on the Arnhem Land border in the 1970s, called the 'Border Store', and dangerous consumption levels by some Aboriginal people, led to a successful challenge to the store's licence by the then Oenpelli Community and the establishment of the Gunbalanya Sports and Social Club. A woman elder at Gunbalanya told me:

> We used to get grog before social club from Border Store. It was unlimited. The drinking was bad then. [A] few of them drowned. The Council had a meeting about the Border Store. We went to court in Darwin to get its licence taken away from it. We got funding from Aboriginal Development Commission for club in 1978 or 1979. The club had its ups and downs—but the Council has mastered it now. Bringing it here from Border Store, the real main reason was so we could control it and look after our drunken mob and sober mob. (Langton et al 1990, 324)

Now importation of alcohol into the community is prohibited, with alcohol only available through the club, with takeaway alcohol only available to those with permits.

At the invitation of the club, the police at Gunbalanya work with the Gunbalanya Social Club to ensure that the club rules are enforced. The club bans people who commit misdemeanours for various periods of time. The club workers write offenders' names on a public blackboard and the dates of their ban periods. The police independently write offenders' names on the blackboard if they have committed alcohol-related breaches outside the club after it closes. This arrangement is supported by the community. The arrangements for enforcing club rules are not entirely successful in preventing domestic violence, and in 1990, women appealed to the police for more action in relation to this major law and order problem.

The Gunbalanya club has been investigated by groups from as far away as Alice Springs to find out how the Gunbalanya model might be adapted for other circumstances.

Unfortunately, in Alice Springs, the Tyweretye Social Club, an organisation formed to implement a canteen proposal similar to the Gunbalaya one, has not been able to get a licence from the Northern Territory Commission, although, as of December 1989, the Commission had granted licences to 72 outlets in Alice Springs. In 1989, Alice Springs had 39.5 per cent more outlets per 100,000 population than the rest of the Northern Territory and 163.6 per cent more than Western Australia (Lyon 1990, 5).

Another initiative from the Alice Springs Aboriginal community, desperate to overcome the law and order problems within their own communities, is the proposal by Tangentyere for a Social Behaviour Project.

Plate 3
Tangentyere night patrollers, Frankie Curtis, Kenny Martin and Brian Cook with mobile telephone donated by Telecom Australia.

The Tangentyere Social Behaviour Project

In May 1990, the Tangentyere Council submitted a detailed proposal for what it called the social behaviour project to the then Northern Territory Attorney-General, Mr Darryl Manzie. The Council requested that his officers meet with the acting general manager to discuss funding and other matters, including the priority which the project ought to be accorded to ensure that it commenced operation.

The submission set out the need for a new approach to the question of indigenous law, especially where this law had been weakened by such problems as the migration of remote Aboriginal people to the township of Alice Springs, alcohol abuse and the resulting social problems. It proposed a process of re-establishing the law of the traditional inhabitants of Alice Springs and integrating the rules of the Australian institutions in Alice Springs by ensuring that all Aboriginal visitors to the Alice Springs area know and understand the rules for social behaviour which have been devised by traditional owners.

The scheme envisaged joint cooperation with Aboriginal police aides in the Northern Territory Police Force, Aboriginal corrections officers and the mainstream Australian law enforcement agencies, but importantly proposed retaining Aboriginal autonomy and authority in decision-making and policy-making. A holistic approach to social control was taken, with specific regard to the disorder from alcohol misuse in the town. Recommendations were made on social and environmental problems which had to be addressed for Aboriginal people to be able to take some control over the problems of law and order in their daily lives.

Barbara Shaw, then acting general manager of Tangentyere, explained the proposal on Aboriginal Law in the following way:

> I believe that many of these problems occur because the visitors are 'outside the law'. They are away from the laws and restrictions of their own communities and do not understand the 'whitefella' law that applies in Alice Springs. Nor do they understand the rules of life on town camps.
>
> Tangentyere is proposing to assist in the creation of awareness of the rules and laws of Alice Springs among these people and also to assist in the application of these. We are calling this our Social Behaviour Project.
>
> We believe that this can best be done by fostering a widespread identification with and commitment to the rules and laws by elders, family leaders and ordinary people in the bush. For this to happen successfully, there needs to be a process whereby the bush people can learn about 'town law', work out their own approach to understanding, teaching and applying that law, and place it in the context of their own laws and customs. Hopefully this could lead to a maximum integration of the two sets of rules, at least in the Alice Springs situation.
>
> It is hoped that the bush people could come up with some suggestions for changes or adaptation of either town or bush law in the process, and this could assist the government in its own legal planning.
>
> The...Project is not meant to be all-encompassing, but to be firmly focussed on areas of day to day life in town. (Langton et al 1990, 391)

The National Campaign Against Drug and Alcohol Abuse funded the project with the assistance of the federal Minister for Housing, Health and Community Services and the Minister Assisting. The project has been operating since early February 1992, although it was begun in 1991 out of private resources. Visits were made by Tangentyere staff to a number of remote communities to commence the project. Particularly, they have looked at what constitutes good leadership and how to pass those skills on in Aboriginal communities. They have looked at styles of Aboriginal drinking and at how to disconnect these styles from popular Aboriginal justifications, particularly of group 'binge' drinking as being part of Aboriginal culture. An anthropologist has given advice on the operations of the project.

Projects such as this one have the potential to solve many of the conflicts between Aboriginal law and the Australian criminal justice system, strengthening the indigenous system of law and order. For a range of reasons, police are unable to provide for law and order in Aboriginal communities by themselves. By working in conjunction with such Aboriginal programs, real progress would be made.

Recommendations of the Royal Commission into Aboriginal Deaths in Custody

The national report of the Royal Commission into Aboriginal Deaths in Custody acknowledges the importance of programs like these and makes two important recommendations:

> 220. That organizations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate

different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates. (4:108) (Australia 1991 Overview and Recommendations, 80)

221. That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal Affairs budget (5:118) (Australia 1991 Overview and Recommendations, 80)

It is a salutary lesson in Australian politics that, following the tabling in 1986 of the Australian Law Reform Commission reports on the recognition of Aboriginal Customary Law (Australian Law Reform Commission 1986), it has been left to Aboriginal people to implement the intent of its recommendations. One hopes that this will not be the case with the 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Another project aimed at educating Aboriginal people to live under two conflicting legal systems. The Barunga School Action Group proposed a community-based curriculum on police and courts. The group, consisting of Aboriginal teachers, teachers' aides, parents and traditional owners, meets regularly at the Barunga School. They want such a curriculum taught from primary school through to high school so that their children would be educated about the Australian legal system, especially the role of police and courts and how to deal with them. This curriculum would be an essential part of the education, they argue, because of the serious difficulties which their children will face.

The criminal justice system and Aboriginal Law in conflict

Aboriginal people in the Northern Territory in discussions with the Aboriginal Issues Unit had diverse explanations for the reasons leading to offences committed by Aboriginal people. Sometimes the cause of offences by youth is one simply of hunger and deprivation in an already impoverished community undergoing further stress. The provision of services to youth, especially recreation facilities, and assistance to families to enable them to cope with the stresses of rapidly changing life, would solve some of these problems. More housing, particularly appropriate housing, and employment, particularly under the Community Development Employment Project, were demands from most communities.

Explanations often referred to the specific problems of young men and juveniles: problems created through a lack of knowledge of Australian law and its implementation; and the trivial nature of many breaches committed. Those that are not punishable under Aboriginal Law are dealt with by police and courts under the Australian system so that Aboriginal people perceive the operation of Australian law as extremely heavy-handed in relation to trivial matters.

Many people felt that there is a need for young offenders to be made aware of the consequences of their actions, especially in relation to how harshly the Australian law treats matters considered minor by Aboriginal standards. It was acknowledged that there are mitigating circumstances involved in offences. Some offenders were oblivious or unaware of the consequences of their actions because of the effect of alcohol consumption and, in some communities, the effects of petrol sniffing.

A real distinction is drawn by Aboriginal people between minor offences and serious offences. Most offences for which Aboriginal people are arrested and imprisoned are considered under Aboriginal Law to be trivial and would probably not constitute an offence, so much as a nuisance. Motor cars and other western technology do, in fact, come under Aboriginal Law now, for instance as highly-prized gifts in ritual exchange. Most motor car offences for which Aboriginal people are arrested, particularly on Aboriginal land, would not be considered serious under, or even breaches of, Aboriginal Law, and would certainly not warrant imprisonment. Over a quarter of the people in Northern Territory prisons in 1988 were serving sentences for a range of mostly minor motor vehicle offences. Swearing is also another example of an act which would not constitute an offence unless it were the kind of swearing which is specifically forbidden by Aboriginal Law, that is swearing to certain kinds of in-laws, or a sister swearing in front of a brother. Aboriginal people made it very clear to the Aboriginal Issues Unit that people should not be sent to jail for these trivial offences.

It was further explained that arrest and jail is not a deterrent because it does not teach anything to young people to prevent them from behaving antisocially. Aboriginal people are adamant that their own Law and the pressure of families would be a far better deterrent and would work to prevent minor crime if there were considerably more assistance from Australian institutions in preventing alcohol and substance abuse

and in providing better education and more recreational facilities.

Some elders have spoken clearly about the need to set the terms under which both laws operate alongside each other. Clearly, they feel that Aboriginal offenders would respond better to the dictates of their own Law and culture than to those of an alien one. Aboriginal people argued that Australian laws would work better if there was an attempt to work with the support of traditional Aboriginal Law. After all, why should Aboriginal people accept that a strange system of law, instituted by strangers, is better than their own and deserves the respect and compliance which they accord their own Law implemented by kinsfolk? In some communities there is the ludicrous situation in which two or three white policemen, with one or two police aides, attempt to enforce an almost completely irrelevant and alien law, while Aboriginal law and order breaks down because the Aboriginal system, and elders, are not accorded the authority which they once had. In northeast Arnhem Land, an elder explained:

> Yolngu Law and Balanda law come together. We can say, 'leave this matter to us. We can deal with it. If it gets serious, we'll call you in.' Your law and my Law can work together to fix it. We have to be fair dinkum.
> Why can't Balanda law recognise Yolngu law. Like police, why can't they recognise us and yet we recognise their law. We recognise them you know, [for instance] court... You know, if [there is] spear and fight, it has to go to Balanda law all the time you know. Because we are Australian citizens, as you mob call it eh, and yet they don't recognise our law. That's the question that always comes up with me. It should be on both ends, both sides. They should recognise our law and we should recognise their law. (Langton et al 1990, 353–54)

On the other hand, when the Australian system is too lenient in respect of serious crimes, justice is not seen by Aboriginal people to be done. Statistics show, and at least one criminologist agrees (Walker 1989), that the courts are lenient in sentencing Aboriginal people and that serious crimes committed by Aboriginal people are often ignored or overlooked in criminological analyses.

Crimes against women, including assault, especially assault arising from domestic violence, and rape, are ignored by the criminal justice system. Aboriginal women requested that there be many women employed as Aboriginal police aides, and that communities urgently require women's shelters.

Police were seen to sometimes intervene in matters in ways which obstructed the course of traditional law. For members of the families so offended, this only resulted in more tension.

It should be no surprise that the highest rates of Aboriginal arrests and imprisonment are in those areas where there are police or many police. At Groote Eylandt in 1989, there were 11 police, and, for the previous year, the highest recorded imprisonment rate in Australia, 2,274 per 100,000. At Galiwin'ku (or Elcho Island) there was one police aide and no other police; the offence rate on Elcho Island has been falling dramatically since 1983, partly, according to one report, because of the operations over a number of years of a Community Justice Project. The Aboriginal experience of police in smaller communities and remote areas is somewhat different from that in the towns. In small remote communities police experience the situation of being outnumbered by Aboriginal people and surrounded by Aboriginal culture and lifestyle. Also, outstations provide a haven from not just alcohol and the pressures of living on large communities, but also from police interference and sometimes harassment.

Where police have not developed good relations, the community elders have some simple, practical suggestions to make to the police:

> If there's a big problem, the police fly or drive in and out. [We want] only the President [to] call the police, and that's better. We want that here. Only the President call the police—for serious trouble. When there's warrants they should come in and ask the President.
> I layed some charges with the police. The police didn't notify President through 2-way radio—didn't notify old people and young people. He just came in. Everyone got a surprise... These police don't do their duty like coming to [community name] every week to see if everything is alright. This settlement is an incorporated community. (Langton et al 1990, 419)

Those remote places where there are as yet no police stations, such as Kintore, Cobourg Peninsula, Minjilang and others, rely almost completely on the mechanisms and rituals provided by Aboriginal culture to deal with disputes and maintain social order. People sort out problems themselves. From time to time, this is a dangerous exercise, and some people want a police presence in their communities, if only for the duration of a particular crisis. In some of the very remote areas people often demanded more police or more policing on a more frequent or more permanent basis.

But people want police assistance which is in sympathy with the problems which the communities face. They want policing in conjunction with the elders' authority, not mass arrest and incarceration. They want appropriate police intervention which prevents and reduces crime, not

intervention which creates criminals, as the present system is perceived to. The following ideas were provided by Aboriginal people for better policing and better Aboriginal–police relations: Aboriginal people want police to respond flexibly and innovatively in situations involving Aboriginal people, especially in situations which potentially lead to apprehension and arrest. They want police to proceed by summons rather than arrest, but preferably to caution and act to diffuse situations rather than arresting a person or persons. Where practicable, Aboriginal people want apprehension and arrest to be replaced by warnings, directives to leave a public place and assistance to go home.

In more specific terms, Aboriginal people want changes to policing practices in the following ways:

1. An end to intrusive surveillance, spotlighting camps at night and breaches of privacy and peace.
2. An end to unnecessary arrest and violence.
3. Notice of intention to arrive at communities with warrants or to arrest people. This means a working relationship with police as is enjoyed with other government departments, including reporting to council offices, properly arranged meetings and courteous behaviour.
4. The stationing of older, experienced (and preferably married) police in communities.
5. Police with whom communities have developed good relationships to remain rather than being transferred after two years.
6. Negotiation and counselling to replace resorting to force.
7. Fairness and impartiality in policing rather than doing the bidding of powerful factions in the community.
8. Better training for police in Aboriginal culture and community life.
9. Police to have respect for Aboriginal rights, including land rights, and to understand and respect features of Aboriginal culture and social life.
10. Aboriginal leaders to be able to open channels of communication with senior police. This would enable complaints about unacceptable police behaviour to be dealt with promptly and solutions to unsatisfactory policing practices to be found quickly. (Langton et al 1990, 426–27)

In relation to the health problems which Aboriginal people face, there were specific recommendations from Aboriginal people and organisations to improve the conditions and care of detainees in police cells. They were:

1. Police need training not only to recognise illness, but to seek medical assistance and to refer prisoners to medical assistance when necessary. Formal procedures need to be developed to ensure that detainees who require medical assistance are promptly referred to the appropriate agency.
2. There is an urgent need for medical alert bracelets to be issued to Aboriginal people with a range of medical conditions requiring treatment and monitoring and police must be trained to respect such bracelets and the care they indicate is necessary.
3. There is an urgent need for police to be trained by specialists to recognise particular health problems, such as head injuries and mental and behavioural disturbance.
4. There is an urgent need for residential and treatment facilities in Central Australia for the behaviourally disturbed to which police can take detainees with such problems.
5. There is a great need for trained liaison officers at police stations and prisons.
6. Particularly urgent is the need for police to attend cross-cultural workshops with Aboriginal people.
7. There is a need for the Police Department to recognise the valuable work that Aboriginal police aides perform, by improving staffing levels, salaries, career structures and training, and by employing many more women as police aides. (Langton et al 1990, 427–32)

Despite the fears of the 1950s and 1960s, justifiable fears in those times which motivated the founders of the Australian Institute of Aboriginal Studies, Aboriginal culture remains a strong force throughout much of Australia, despite high levels of ill health and mortality. There is nothing to gain in the white resistance to Aboriginal culture; too often the police are seen as the frontline of that resistance. Better community relations will come about, as is happening now in parts of the Territory, as police and Aboriginal people work together in meaningful and constructive ways on projects which are largely designed by Aboriginal people. Aboriginal people say: Force doesn't help.

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