

Aboriginal culture and violence

By Sharon Payne

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I remember as a young psychology student studying the effects of desocialisation and reading the work of Bettelheim, a Jewish psychologist incarcerated with his contemporaries in concentration camps. His descriptions of the very human responses to the Nazi desocialisation campaign were eerily familiar. It was as if I was reading about my own relations and I realised the behaviour I had been told was 'cultural' or 'Aboriginal' was actually psychosis, the legacy of a colonising experience as harsh as anything faced by a group of humans.

Fast forward to 2006 and the legacy remains, still being acted out in abusive and destructive ways, the colonising experience continues. And the same response is being offered – more desocialisation in the guise of law and order, more transgenerational trauma and more misinformation about pathological behaviour in Aboriginal communities as somehow based on cultural factors. The recent media frenzy and governmental responses to the abuse of children around Alice Springs illustrate just how little we have learned as a country.

I also remember as a public servant working with the Royal Commission into Aboriginal Deaths in Custody reading about the lives of those who had died and how Aboriginal women in the NT were 28 times more likely to die from family violence than deaths in custody. Reports of child abuse in NT and Cape York communities from women such as Audrey Bolger and Judy Atkinson, including sexual assaults and venereal disease, were regular items in the news.

The irony is that many of the young people who were the victims we were wringing our hands over in 1989 are now the perpetrators - the cycle continues. Based on past performance and current response, we can expect to see the young people currently making the news, if they live that long, taking their place in the criminal justice system as their frustration, anger and despair is acted out.

So the question for us as lawyers, and more particularly for Aboriginal Legal Aid, must be: does the law have anything to offer to address what is arguably



a social justice or mental health problem? The response is a cautious yes, but not in the form of the over-policed, adversarial, lock-em-up approach currently touted as the answer.

Instead I would argue that it is in the restorative or re-integrative justice field that we should look for answers, albeit a more expensive and, some would say, a more grown-up version of law-making. One that requires long-term commitment, leadership and finally sufficient resources that have ever been denied to Aboriginal organisations or community-based initiatives despite the inference that we have somehow failed to fix the problem.

Restorative justice, whether circle sentencing, victim/offender conferencing or other forms that provide a re-integrative shaming experience for the offender and all those who have been affected by the offending behaviour. Indeed it is the process which participants have largely described as 'fair' that is key, not the outcome where those with no personal interest in the life of the offender or victim play out a battle to win. The artificial world of courts, lawyers and judges is replaced by an inclusive real world situation where people really have to face up to what they have done in a supportive environment.

Of course this approach is not new, closely mirroring all healthy conflict resolution models whether played out in the home, the workplace or throughout history in all societies. It is this process that is 'Aboriginal customary law', the understanding that repairing the situation is in the interests of group harmony is the essence of good law-making, not punishment or revenge. Payback in the truest form is about restoring balance, based on an understanding that each action has a consequence, and in a society without money, buildings to lock people up in or to deprive of non-existent goods, the consequences for some actions are either ex-communication or physical.

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One law for all Australians cont...

These agreements will, over time, make a real and significant impact in terms of overcoming some of the complex problems that underpin the sense of hopelessness experienced by many Indigenous Australians and manifested in the violence and abuse so entrenched in these communities.

One of the ways in which the Government is assisting Indigenous communities is through the Family Violence Prevention Legal Services programme. By focussing on family violence rather than just domestic violence, it not only reflects the extended nature of Indigenous families but approaches the causes and manifestations of violence in Indigenous communities in a holistic manner.

It started out with 13 services providing legal advice and assistance, counselling and support for victims of family violence and sexual assault, as well as conducting a range of community awareness activities to promote the rights of victims

Aboriginal culture and violence cont...

The other tragic thing about this misinformed debate currently raging is the lack of appreciation of what is law and what is custom, and indeed what is pathology. Calls to legislate the right to a so-called 'customary law' defence are based on assumptions that bear little resemblance to reality including the fact that this is used very rarely. Mitigating factors for our clients tend to be, as for others, their extreme socio-economic disadvantage, miserable life circumstances, abusive childhoods and complete lack of opportunity to change their lives or lifestyles.

But restorative justice, crime prevention, mental health and social equity programs depend on governments and bureaucrats to play their part, and the fledgling, half-hearted effort in the NT to incorporate such processes into the criminal justice system suggests that this will not happen overnight. The recent calls for a law and order response to the problems in the town camps around Alice do not indicate a commitment by government to such initiatives.

The lack of good-will by key players coupled with misinformed assumptions means that each decade or so, we will continue to read about the terrible plight of Aboriginal women and children. Aboriginal men, who are actually the largest single group of victims of violent assaults in the country, will continue to be stereotyped as abusive controllers and Aboriginal Legal Aid Services vilified for defending them, if not their actions.

and the role the community has in demonstrating family violence is unacceptable. It has been so successful that the Government went to the last election promising to double the number of units, which happened last year; and contributed another \$23.6 million in this year's budget to take the total to 31 services across Australia.

For those of us who have been travelling to Indigenous communities for 30 years and have witnessed the pain and the suffering firsthand, there is no easy solution, only a steadfast resolve to deal with the underlying causes of the problem. The truth is all jurisdictions have been making efforts to address Indigenous family violence but for the first time, governments are prepared to admit they do not have all the solutions. A new approach is being taken. The time is right for all governments to work together to show collective leadership on this issue.

Small steps towards reducing domestic violence cont...

to provide emergency assistance for women experiencing domestic violence. Where a defendant is served with a restraining order the inaccessibility of police in remote communities limits their effectiveness in protecting a woman from further violence. In our view, increased accessibility to police services and safe houses/emergency accommodation is necessary to reduce violence against women in Indigenous communities.

It is clear that there is a high rate of violence against women in Indigenous communities. It is also clear that restraining orders, while imperfect, are the primary mechanism on which we must rely to reduce violence against women in Indigenous communities. Restraining orders only act as a disincentive for future violence. They can not of themselves actually prevent violence. If we are reliant on restraining orders to reduce violence against women in the short-term, immediate steps must be taken to improve their effectiveness while more long-term strategies can take effect.

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