TRIBAL MARRIAGE IN A CHANGING SOCIAL ORDER.

The following brief discussion was stimulated by a recent case in which a European drover (Michael Daly) is reported to have expressed a desire to marry, and finally did marry, a young aboriginal woman (Gladys Namagu). The Northern Territory Welfare Department (responsible for Native Affairs) initially refused permission for the marriage on two counts: Firstly, because the aboriginal girl was a ward within the meaning of section 67 of the Northern Territory *Welfare Ordinance,* and secondly, because she already had an aboriginal husband (Arthur Julama). The case developed out of an interesting situation, full particulars of which are not yet available. It was reported in the Press that Gladys had started with her aboriginal husband, Arthur, on a droving trip from Western Australia; in the course of this he was obliged to leave the party, including his wife. Later he made a complaint to the Director of Welfare for the Northern Territory; following some investigation, a charge of cohabiting was laid against "a European man." It was after this that "the man said he wanted to marry Gladys."[1]

An appeal was made to the United Nations by two members of the Northern Territory Legislative Council to exert pressure on the Administration and so alter the decision. The Minister for Territories told the House of Representatives that he would not intervene, but relied on the judgment of the Administrator and the Director of Welfare for the Northern Territory. Reports, *via* the Press, suggested that initially Gladys Namagu wanted to remain with her tribal husband: others, that the drover would wait six months, as stipulated by the Minister for Territories, until the girl was of age and in a position to make her own decision in the matter. The drover's age was 33 years, the girl's either 20 or 23 years. She is said to have been tribally married about seven years ago to Arthur Julama.[2]

1 *West Australian,* Perth, 14th August 1959: The Minister for Territories is reported to have made the above comments in the House of Representatives. On the same date it was noted in the Press that Gladys had returned to her tribal husband and did not wish to leave him. The Minister is alleged to have said that the published reports on the Katherine court hearing (*i.e.,* referring to the charge of cohabiting) "had not truly represented the position"; "The Director of Welfare had not refused the white man permission to marry the aboriginal girl but as her legal guardian had withheld consent."

2 *West Australian,* 19th and 24th August 1959; *Sunday Times,* Perth, 23rd August 1959. See also Press statement by the Hon. P. Hasluck, Minister for Territories, 21st August 1959.

Particulars concerning the aboriginal couple.

Arthur Julama stated that he was born on Newry Station (an outstation of Auvergne, Northern Territory, close to the Western Australian border) and was a member of the *Wadjagin* tribe. This has not been recorded as a tribal name to my knowledge, and is possibly *Wandjira,* although the tribe occupying Newry station was *Miriwun* (or *Miriwong*). Julama is not a personal name but a subsection (or "skin") term, *djulama.*[3] Gladys Namagu's birthplace was given as Ruby Plains, near Hall's Creek (in Western Australia), and her languages as Wailbri and Walmadjeri. Arthur is reported as saying that he stood in relationship to the girl as a mother's brother or as a "tribal guardian." This would ordinarily preclude marriage, but since they belonged to different tribes it would not be viewed as a barrier. Arthur claimed that he had approached Gladys's "mother" (her actual mother being dead), *i.e.,* her mother's sister, as well as her brothers, these living at that time at Nicholson Station (Western Australia) and Fitzroy Crossing (Western Australia) respectively, and obtained permission for the marriage. Gladys was then working for a Mr. Bridges at Kunjibar Station (?), west of Hall's Creek, while he was working at Moola Bulla (Western Australia). He claimed, too, that he had spoken to Mr. Beharell (Native Welfare Officer at Derby) and obtained his consent as well. Arthur was not sure when this took place; at first he held it was nine years ago, when the girl was 15 years of age. When it was suggested that it may have been five years before he acquiesced. The Northern Territory Administration assessed the girl's age as 20 (in 1959). As far as I know no further confirmatory data are available.[4]

It was anticipated that an appeal would be lodged by Michael Daly against the decision of the Director of Welfare. The Director emphasized the aspect of tribal marriage in relation to the aboriginal pair, and was endeavouring to obtain more information concerning this. The present writer was approached in order to offer independent support on the question of tribal marriage.[5]

We were able to have access to the files[6] on this case held in the Derby office of the Department of Native Welfare for Western Aus-

3 See *infra,* at 329, 333.

4 Personal correspondence: Copy of letter (undated) from Director of Welfare to Mr. Beharell; reply (3rd September 1959) by R. Berndt through the Commissioner for Native Welfare, Western Australia.

5 Director of Welfare, Northern Territory, to R. Berndt, 4th and 16th December, 1959.

6 Letters on Department of Native Welfare file, Derby, from C. L. McBeath,

tralia. In these it appears that a girl (who turns out to be Gladys) was badly burnt by her old blind husband, named "Blind Billy", at Bohemia Station about May 1951. Apparently her aged husband had reason to suspect her of infidelity and punished her accordingly; her age was assessed at 13 years. Mr. Bridge of Koongie Park Station, who was at Bohemia at the time, removed Gladys from the camp and took her to Christmas Creek for medical treatment; she was then returned to Bohemia. She was eventually sent to Wyndham Hospital, and after her discharge to the Fitzroy, *via* Derby, eventually reaching Bohemia. She then went to Koongie Station with Mr. Bridge and remained with his wife. However, she complained of feeling ill, was examined at Moola Bulla, and was said to be suffering from some nervous condition; she refused to return to her old husband. Early in December 1952 a Mr. Sam Thomas of Balwina Station, Hall's Creek, approached several people, including the Department of Native Welfare, asking that Gladys be returned to her husband, Billy; but apparently she remained at Koongie. In her earlier statement Gladys was called *Nama-boo*; in August 1959[7] she was referred to as *Nama-bee*. She was said to have been born at Mungi, south-east of Billaluna Station; her sub-section *nangady* (*nangari*), and her tribe *Wanga-junga*. Her father was named *Lele* and her mother *Yaceiar;* the former died in the "desert", the latter at Christmas Creek Station. According to this information Gladys's mother "promised" her to Billy *Mubudadi* (*i.e.*, "Blind Billy"); when *Yaceiar* died the girl was cared for by Mick *Gilugilu* and Biddy *Gnepegee* (relationship unknown), and eventually went to her betrothed husband. Apparently Gladys was subjected to much maltreatment by Billy, who was jealous, and the burning was the culmination of a long series of such acts. Gladys met Arthur Julama at Hall's Creek and they later went to Moola Bulla Station, possibly during 1954, where they were both employed. In July 1955 they went to Derby, going on to Brooking Springs Station and to Oobagooma Station, where they worked; later they sought employment on Wave Hill Station, in the Northern Territory. During this period she was regarded as Arthur's wife. In these records Arthur is thought to have been born at Moola Bulla Station; his father's name was *Chorke,* and he was said to have belonged to the *Kitza* (?) tribe. His subsection is given as *chugeeroo* (possibly *djuburu,* or *djuburula* (?)). The District Officer (Mr. J. Beharell),

Manager-Superintendent Moola Bulla Native Station, 6th December 1952; Statement of Nama-boo, *alias* Gladys, 6th December 1952; E. K. Bridge, 6th December 1952; and other correspondence.

7 Native Welfare Department, Derby, correspondence from Beharell, 27th August 1959; 3rd September 1959.

then at Derby,[8] stated that in his opinion Arthur and Gladys were tribally married, since she would not have returned to Billy Mubudadi.

Since the period of my most detailed research in the east Kimberleys was in 1944-1945, I have of course no record of the marriage in genealogies collected during that time. However, early in 1958 what appear to be the names of the two people in question were recorded (by my wife) in the course of field work at Balgo Hills, the Pallottine Mission Station south of Hall's Creek. Their case was not followed up, since there was no particular reason for doing so, and they were peripheral to the genealogical material then being obtained; they were mentioned in connection with a former wife of one of the girl's brothers. Her name was given as *Ngamabu,* her sub-section as *nabangadi* (equivalent to *nangari*), and she was said to be at or near "Gundjiba", to the north. In this paper, however, the girl will be referred to as Gladys *Namagu* to conform with the Press reports and avoid confusing the reader. Her husband's name was given as Arthur, but little was said about him except that his subsection was *djuburula* (equivalent to *djulama*), and that he was at a place called "Mulumulu" where there was a "house" (*i.e.,* a settlement, as contrasted with an ordinary local site); his language was given as Daru, or Djaru, but from the Balgo viewpoint this is a general name embracing most of the people north of Gordon Downs and Nicholson. When they were reported as having no children, routine questions were asked about her relative age ("is she a young girl?"), and whether she was newly married; the answer in both cases was "No". The fact of her marriage was accepted, and it was not pointed out as a "wrong-way" arrangement as some other unions were—remarks which were not confined to local examples.

In March 1960, while visiting Balgo again, in the course of checking through genealogical material we asked for a few more particulars about the three aborigines immediately concerned. Gladys's mother's close sister, *Ngandjungandju,* was at Balgo and took part in the discussions. She claims to share the same "country" as Gladys; a soak and waterhole complex in the "desert" country south of Balgo, including the sacred site of Djaljirnganu and the "permanent" rockhole of Jimbur.

Gladys's first husband, old Mubudadi, whose country was given as Lundamada, somewhere to the southwest of Balgo, was said to be of the *burgulu* section, equated with *djunggura;* this is almost the same as *djungurei,* but it is claimed that the slight difference here shows

[8] 3rd September 1959.

the two are not fully equivalent. On the other hand, it was made quite clear that Gladys's mother had originally promised the girl to him in marriage, and that this was a formally correct relationship: the mother, of the *nawala* (*naburula*) subsection, would regard him for this purpose as being of the *djambidjina* subsection. In fact *djambidjina* was sometimes given as the equivalent of *burgulu*. If *burgulu* were equated with *djunggura,* as it often is, and this in turn roughly with *djungurei,* the latter is an alternative for *djimida*—which, as the table in the following part shows, is not ideally the "correct" subsection for marriage with *nabangadi* (*nangari*). In fact, in a number of actual cases *burgulu* men are married to *nawala* (*naburula*) women, *i.e.,* to women in the same category as Gladys's mother.

This is not the place for a discussion of the ways in which various section and subsection terms are equated, conventionally and in practice. The main point is that two different systems had to be reconciled; *i.e.,* that this was not a marriage arrangement within the bounds of one system. Such "mixed" marriages are of course quite frequent today.

Nor is it necessary to go into details about the relatives of these three people, since this is not directly relevant to the main theme. The point here is that, whether or not Gladys's first marriage was an ideal one in terms of section-subsection affiliation, it was formally arranged by the girl's immediate kin and evidently accepted as quite correct. Subsequently, however, this first husband is said to have ceded to Arthur all rights in her, on the ground that she and Arthur were already sweethearts. By early 1958 the first marriage was assumed to be a matter of the past, to the extent that it was not mentioned in connection with Gladys and Arthur. Even though this second marriage was not regarded as an "ideal" one, the fact that Gladys and Arthur came from different areas and different language units meant that their relationship was not by any means as close as the subsection affiliation alone, and the kin terms associated with this, would imply.

The Problem.

This case is anthropologically interesting to us, not so much because Gladys was said to be a ward under the Northern Territory *Welfare Ordinance,* but because she is presumed to have been married tribally to Arthur. Michael Daly and his supporters were interested in overriding, ignoring or declaring invalid her marriage to Arthur. I shall consider this aspect in general terms,[9] without dealing with

[9] *I.e.,* in general terms insofar as it is not a detailed or exhaustively documented

certain other interesting implications of the case.[10] The problem is: (a) What are the conditions of "tribal" marriage? How binding are they? Under what conditions can divorce take place, and how is it instituted? In other words, can we establish the "legality" of "tribal" marriage? If so, why is this not upheld in a European court of law? (b) If we can answer these questions, we can also make a statement concerning the current position of the three persons immediately involved in this marital triangle.

Traditional aboriginal marriage.

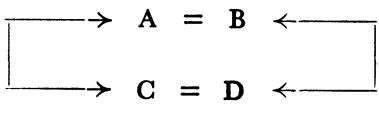
(a) *Kinship*: It is fairly common knowledge that throughout aboriginal Australia marriage rules were framed primarily in terms of kinship. These rules were, of course, not codified, and varied from one tribal unit to another. Each such unit had its *ideal* preferences; but each also, traditionally, permitted alternative marriages. An analysis of *actual* genealogies from any one tribal area would possibly reveal a preponderance of such "alternative" marriages. There was no stigma attached to them, nor were sanctions invoked against them; the ideal, however, was something to be aimed at. Nevertheless, marriage was prohibited between certain classes or categories of kin—both consanguineal, *i.e.*, related by genealogical ties, and affinal, *i.e.*, related through marriage. The range varied from one tribe to another. There appears to have been in most cases a core of relatives between whom

account of aboriginal marriage; but specific in that it centres on this one case. For instance, it is not possible here to examine on a comparative basis the question of "what is marriage?", although it should be borne in mind that this has been the subject of much discussion, particularly in Africa (*e.g.*, as regards the definitions of "Christian" marriage, and "customary" or "African" marriage, and the impact of one on the other). See for example, A. PHILLIPS, ed., SURVEY OF AFRICAN MARRIAGE AND FAMILY LIFE, (1953, Oxford University Press); A. P. ELKIN, THE AUSTRALIAN ABORIGINES, (1954, Angus and Robertson, Sydney); P. M. KABERRY, ABORIGINAL WOMAN, SACRED AND PROFANE (1939, Routledge), cc. IV to VI; C. H. BERNDT, MARRIAGE IN ABORIGINAL AUSTRALIA (volume in course of preparation).

10 Without being aware of all the circumstances, people have remarked that "It's a shame an aboriginal girl can't be allowed to marry a European. Is this apartheid?" or, "Why interfere with the course of true love?" H. Opperman (Liberal, Victoria) is reported (in *West Australian*, 14th August 1959) as asking the Minister for Territories if this meant a ban on mixed marriages. This attitude was carried to an extreme in a syndicated article published in the (Adelaide) *Truth* of 16th January 1960, entitled "Devotion the Bureaucrats tried to kill", and sub-titled "White man meets black girl—the untold story." It was replied to in some detail in the *Weekend Mail* (Perth) of 6th February 1960 (by Alison Fox, from information supplied by Mr. S. G. Middleton, Commissioner for Native Welfare for Western Australia, and R. M. Berndt). These questions are relevant only indirectly in the present context.

sexual associations were viewed almost as incest. However, even here flexibility was evident in the case of "long way" (distant or not genealogically traceable) kin; those who might be related in classificatory terms as mother-son, father-daughter, mother's sister-sister's son, father's sister-brother's son, wife's mother-daughter's husband, wife's father-son's daughter, and so on. This matter of kinship, then, is important in considering "tribal" marriage. Traditionally these people placed much emphasis on it. All members of a tribe, and sometimes even those outside it, were linked in a complex network of reciprocal relationships which formed the social basis of everyday activity.

(b) *Other social groups*: Other considerations were also taken into account, both directly and indirectly, before a marriage was arranged —particularly such formal categories as moiety, section, and subsection classification, and totemic affiliations. Here again there were considerable differences as between one area and another. In north-eastern Arnhem Land, for example, there are exogamous patrilineal moieties; in western Arnhem Land, exogamous matrilineal moieties, one comprising three exogamous phratries, the other two. The section system in general involves four named divisions, arranged in two intermarrying pairs; descent is indirect matrilineal, *i.e.*, a child's section is dependent on its mother's, but differs from hers as well as from its father's. There is no distinction in terms as between male and female. Thus:

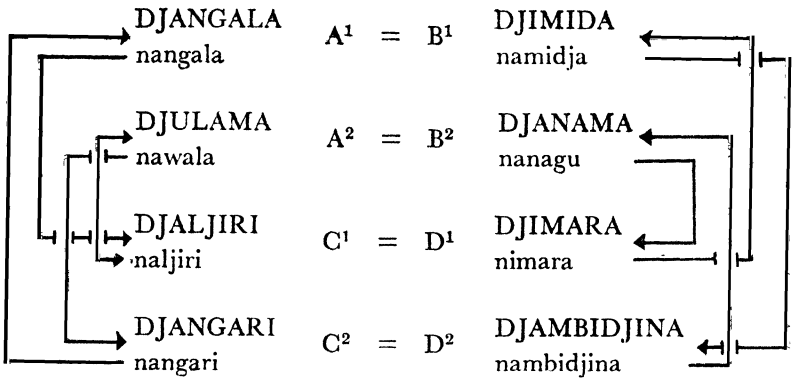


= signifies union.
arrows signify linkage between mother and child.

Subsections, mentioned in the case under review, are widely distributed over much of the Northern Territory and Western Australia, although the terms used are not the same throughout. This is an elaboration of the section system, based on the distinction between cross-cousins (children of siblings of opposite sex) and the children of cross-cousins; and in it a person's relatives are classified into eight named categories. The subsection terms distinguish between male and female.

The arrangement for the eastern Kimberleys (Western Australia, extending into the Northern Territory) and for much of the region associated with Arthur and Gladys is:[11]

[11] Words in capitals represent males; words in small letters represent females.



This table represents the ideally "correct" system of marriage and descent as far as the subsections are concerned. *Some alternative marriages are permitted with the full sanction of the group.* The conventionally preferred marriage, however, is with a second cousin.[12] During 1944-1945, when my wife and I worked in this region, we were told that only four marriage forms were really "wrong", as distinct from "a little bit wrong but a little bit straight"; these were classificatory brother/sister; mother's brother/sister's daughter; son/mother; and son-in-law/mother-in-law. Even so, marriage between a "long-way" brother and sister has been recognized as permissible. The first three of these variants involve members of the same matrimonial moiety. (*I.e.,* A^1, A^2, C^1, and C^2 are classified as belonging to one, unnamed, matrilineal moiety; B^1, B^2, D^1, and D^2 to the other. The subsection system is arranged as two intermarrying matrilineal moieties.)

(c) *The relationship of Arthur and Gladys*: Arthur Julama's subsection is given as *djulama,* Gladys Namagu's as *nangari.* This means that both belong to the same unnamed matrilineal moiety, intermarriage within which is usually discouraged. The preferred marriage-type for *djulama*[13] is *nanagu;* for *nangari, djambidjina.* However, a *nangari* would ordinarily stand in relation to a *djulama* as sister's daughter or wife's brother's daughter. This would conform with Arthur's statement that he was a "mother's brother" to Gladys, but not necessarily a "tribal guardian" (since they belong to different tribes).

As already pointed out, because of the provision for alternative marriage types this subsection relationship would not preclude marriage if the couple were not closely related in genealogical terms.

[12] This information is taken from C. Berndt, *Women's Changing Ceremonies in Northern Australia* (L'Homme, Herman et Cie, Paris 1950), 18-22. See also A. P. ELKIN, *op. cit.,* P. KABERRY, *op. cit.*

[13] See table on this page.

Alternative marriages were traditionally permissible, especially if the couple involved belonged to different tribes, provided that the majority of interested persons were agreeable. These would, generally, be the parents, mothers' brothers, and fathers' sisters of each, the girl's brothers and her male cross-cousins and parallel cousins (children of siblings of the same sex). Arthur seems to have approached at least some of those concerned in the traditional kind of agreement.

On the face of the evidence, there is no reason why a marriage between these two should not have taken place. One must bear in mind too, in support of this, that the traditional social organization throughout this region is no longer vitally important, so that variant forms of marriage are even more readily accepted, and possibly their incidence is higher than formerly. In other words, the conception of "ideal" in relation to "actual" marriage is changing, but not to such an extent as to affect traditional definitions of marriage as contrasted with other types of union.

(d) *Ratifying Marriage*: The above discussion has dealt with the range of permissible marriage partners. There are also the traditional betrothal arrangements to be considered. Throughout aboriginal Australia infant betrothal was, and still is, relatively common. The parents and immediately interested kin of two children of opposite sex make arrangements for their betrothal, sometimes sealing the contract by an exchange of gifts. The parents and brothers of the girl so betrothed expect to receive, over a period of years, gifts which maintain the contract; and discontinuance of these may invalidate it. There are variations on this pattern, especially in relation to the respective ages of the betrothed couple. Betrothals may take place before the birth of either or both; or a small girl may be betrothed to a youth or fairly old man—occasionally, *vice versa*. Such arrangements were designed to ensure social and marital security for both parties, and in a traditional setting seem on the whole to have worked quite smoothly. Although there are exceptions, consummation of the union does not usually take place until the girl reaches puberty, or the boy has reached social adulthood, some time after puberty. Most betrothals are apparently carried through to their expected conclusion; but they may be broken off, depending on circumstances, and this may involve payment of compensation by the girl's parents to her prospective husband, should she contract a union elsewhere; or his permission must be sought should she want to marry someone else, and if he agrees to this he may or may not expect to be recompensed.

Despite this ideal of very early betrothal where girls are concerned, many betrothals are not arranged until the two people con-

cerned are nearing or past puberty. They may or may not initiate proceedings themselves, but it is more usual for one of them to make a tentative approach through an intermediary (the initiative is more often, although not always, taken by the man). In this case, too, unless both of them are a long way from home in a non-tribal setting (for example, are living in Darwin but have few "countrymen" there), the parents of either or both, or some other kin, arrange the marriage and receive gifts—which are viewed as compensating them for the loss of the girl, but particularly as visible evidence of the man's intention to shoulder his marital obligations. Marriage is not just a union between two individual persons, but the linking together of two families in a special kind of relationship. It means the re-orientation of kin alignments, the imposing or reinforcing of restraints where some of them are concerned, the alteration in some cases of behaviour patterns.

The first major test of any marriage in aboriginal Australia concerns these points (with a number of local variations in the basic pattern). Permission has been sought and given by persons closely related to the girl; gifts ("payments") have been made by the man (himself, or these who stand for him—his parents, brothers or other kin, or an intermediary); he has assumed certain responsibilities; and has expressed in a tangible way his good faith and his willingness to continue doing so.

Usually there is no ceremony associated with consummation of the marriage; but depending on the tribe there are, or were, minor rituals signifying the assumption of marital relations. In these days, in consequence of outside pressures, they are often dispensed with. The second test of any marriage in aboriginal Australia, therefore, centres on cohabitation, the couple's publicly living together. This involves sharing a common home (hut, windbreak, etc.) and fireside; the man providing food (especially meat) for his wife, and in the contact situation supplying her with goods, money, clothing, etc.; while she helps him in a variety of ways, and also supplies food (especially vegetable food) and does most of the cooking. Regularized sexual relations are implied.

A third test of any marriage in aboriginal Australia was, and is still today in varying degrees, the birth of the first child. The criterion of fertility was more significant in some areas than in others, but in the contact situation it is not emphasized.

(e) *Elopement*: Throughout aboriginal Australia elopement seems to have been conventionalized, and in fact the expected behaviour in

certain situations. Whether or not it was viewed seriously would depend (1) on the kin relationship of the couple, and (2) on whether or not the woman was already married or betrothed to someone else. If not, there was likely to be little trouble. A party might be sent out to recover her; but usually, if there were no complicating circumstances, they would eventually return to the home camp and were regarded as married, with all the responsibilities that this entailed; if they did not, overtures would be made by an intermediary, and responsibilities assumed indirectly.

Should a girl elope when already betrothed or married, the situation could become quite serious. The man who had abducted her, whether or not she was willing, would have to account for his actions to the aggrieved husband. His response and those of his close relatives might take any of a number of forms. A party might set out in pursuit of the guilty pair, and wound or kill either or both; or she might be taken forcibly back to her husband, who might punish her by spearing her in the thigh. Often the matter was resolved when he was paid compensation and ceded his rights in the girl, allowing her sweetheart to be openly acknowledged as her husband.

In all cases, the husband retains an acknowledged right over his wife, who is regarded as his wife whether she has deserted him or not, until the breach is resolved by the payment of compensation; and/or until he has relinquished all claims to her by a statement to that effect in the presence of others—especially those initially involved in the betrothal and marriage arrangements.

(f) *Divorce*: Divorce, or dissolution of marriage, is or was recognized throughout aboriginal Australia, although here too there were local variations. It is said to take place when a husband asserts that he no longer has *legal*[14] claims over his wife. As noted, such claims can be revoked only when he (1) receives compensation and/or (2) publicly renounces all rights in his wife, ceases to provide for her and her children, and relinquishes his obligations to her relatives. A woman has no absolute rights over her husband and cannot divorce him; she can claim no compensation, but may be able, though rarely, to bring the marriage to an end by common consent. Occasionally some ritual action is associated with divorce; *e.g.*, breaking firesticks, destroying a common camp, cutting a length of indigenous twine.

[14] By "legal claims" I mean that a person has a legitimate right, supported by majority opinion in the context of his own society and culture, to proceed in an approved fashion against an offender in order to obtain redress.

A man is not required to give reasons for pronouncing an act of divorce. Usually, however, he does not do so without some provocation; for example, the wife's refusal to live with him or to assume her sexual responsibilities; her neglect of domestic duties, such as preparing food; her consistent adultery and promiscuity (adultery being defined not in terms of extra-marital relations only, but as sexual associations which have not received her husband's approval); consistent quarrelling between co-wives; infertility.

Throughout aboriginal Australia then, traditionally speaking, divorce may be instituted only by a husband. The wife cannot appeal against his decision; but through common consent or pressure from relatives the decision may be revoked, that is, they may come together again and resume their mutual responsibilities.

(g) *Further aspects relating to marriage*: Genealogies collected from various parts of aboriginal Australia reveal, among other things, that (1) "marital mobility" is fairly common for both men and women; and (2) although polygyny was, and still is in some regions, not only acceptable but highly desirable, monogamous unions were much more usual. The reasons for these, and their implications, will not be considered here. Concerning "marital mobility", it can be said that women were always in great demand. The fact that they were often married to men older than themselves meant that they could still be relatively young, or still of childbearing age, when their first husbands died; the levirate formally ensured that they passed on to eligible men. In polygyny, all co-wives were nominally regarded as having equal status, although a first wife might claim more privileges, or a younger one might make such claims on the basis of sexual preference shown to her by their common husband. Dissension between co-wives did occur, but was not as common as has sometimes been reported.

In some areas women enjoyed a marked scarcity value, in others the balance was fairly even. In some areas women were "cornered" by middle-aged and older men, making it hard for younger men to find eligible spouses. Of the many quarrels and fights reported from various parts of aboriginal Australia, the greater number both directly and indirectly concern women.

Two aspects need underlining here. The first has to do with "romantic love", the second with extra-marital relations. Although most marriages are arranged, before the actual marriage is ratified the approval of both parties, or at least one of them, may be sought; if the girl has already formed an attachment to someone else, and this is usually public knowledge, arrangements are often varied to take

it into account. The matter of individual choice is much more apparent, though, when the couple are of approximately the same age and may have been lovers before the man approaches the girl's parents and other interested kin.

In traditional aboriginal society, romantic love received just as much attention as it does in Western European society, although in a less self-conscious way. By "romantic love" I mean the freedom of the individual to focus his or her affection on a chosen partner or partners, and to vary this as he or she feels inclined. (This is of course always a relative freedom, because there is no society where such choices are not limited in some way, deliberately or otherwise.) Briefly, without entering into a discussion, the evidence here includes the prolific series of love (magical) songs and rites, and the pre- and extra-marital relations which are, or were, customary in most regions. The point which concerns us is the matter of extra-marital relations.

In the case of a man, there are no restrictions on his extra-marital activities, except for the risk he may run if his partner is married, and the informal pressures which may be exerted by his wife or wives. A wife, on the other hand, conventionally should remain faithful to her husband. In actual practice, extra-marital liaisons may be expected of her, and she may even seek them without her husband's knowledge. In most aboriginal tribes certain kin, standing in relationship to her as classificatory husband, or husband's actual brothers, are viewed as eligible partners providing her husband has given his consent. Sometimes he is assumed to have done so tacitly, but this assumption could lead to difficulties later on. In any case, it may not be necessary to obtain such consent prior to each act; a standing arrangement may be sufficient. There are numerous variations here, ranging from ritually sanctioned promiscuity, which is rare these days, to a husband's granting to a friend permission to "sleep" with his wife. In this last case, there may be an exchange of wives between two men; a wife may be lent to cement a friendship and to ensure goodwill; or it may be a predominantly economic transaction (in exchange for gifts or services rendered). In doing any of these things a man does not relinquish his rights in his wife; he is merely exercising them, or one of them. There are, however, examples in which a man has "given away" his wife, stating the breach to be final, with or without compensation.

A broad definition of traditional aboriginal marriage.

Aboriginal marriage can be generally defined in the following terms, which have already been discussed:—

1. The couple are regarded as being eligible to marry each other, within the context of local rules defining ideal preferences and accepted alternatives. Aboriginal marriage systems are flexible enough to allow of choice on this score, within a certain range; but all discourage certain types of kin from contracting a union, and prohibit others.

2. Betrothal arrangements are made between the two families (two kin groups) concerned, certain members of which play an executive role. A man may institute proceedings himself or through an intermediary. An exchange of gifts between those concerned, with the assumption of responsibilities and obligations on the part of the prospective husband, ratifies the contract, giving it a binding quality. In some areas, notably the Western Desert, and western Arnhem Land, a man is expected to supply food for his betrothed wife over a period of some years while she is still living as a child in her parents' camp. He is then said to be "rearing her"; it is through his efforts that she develops into a physical adult. She may visit his camp occasionally, or even come to live with him while still quite young; but cohabitation in this case does not necessarily mean that the marriage has been consummated.

3. Although betrothal shades into marriage, actual marriage is involved when the couple live together publicly, both attending to their marital obligations including sexual relations.

4. The birth of the first child strengthens the union.

From the time betrothal arrangements are finally confirmed, the betrothed and later actual husband has full responsibilities and rights over his wife. A woman cannot as a rule proceed effectively against her husband, although she can informally exert sanctions, and can appeal to her father and other kin in the case of maltreatment and neglect.

A man forfeits his rights in his wife and in any children she may subsequently bear when, by public statement, he declares that he no longer regards her in this light. Payment of compensation is not enough in itself to sever the relationship. An explicit statement is necessary as well, along with clear proof that he means what he says; *i.e.,* the lapsing of reciprocal obligations between the families involved, insofar as that particular union is concerned, and between the estranged couple, and the fact that they have ceased to live openly together. A man has the right to dispose of his wife's sexual favours as he wishes, with or without her consent; but doing so on a casual or temporary basis does not mean that he relinquishes his own rights in respect of her and her children.

Marriage in the perspective of alien contact.

In the settled regions, on Government settlements, Mission stations and in the towns, a form of what is called Christian marriage has sometimes been adopted. At one end of the continuum are those aborigines who can be regarded as European-oriented, at the other those who are traditionally-oriented, still adhering more or less completely to their aboriginal way of life. The vast majority fall in between, and only a small percentage has been married according to European conventions (by civil or religious ceremony). (I am excluding for this purpose people of aboriginal or part-aboriginal descent who live in and around southern cities and country areas.) "Sophistication" is no guide here; and a formal European-type marriage ceremony does not necessarily mean rejection of what pass for traditional aboriginal standards in relation to marriage.

Many people of aboriginal descent do continue to adhere to traditional marriage practices and standards in broadly the way sketched here. Certain modifications have taken place. For instance, marriage between members of different "tribal" units is more prevalent, and indeed the definition of "tribe" in the present situation is no longer what it was a decade or so ago. Also, actual kin relationships are becoming less significant. There are a number of interesting side-issues which can be indicated only sketchily here. In some areas, missionaries and others have been attempting to re-orient local ideas about kin and other social relationships, especially in reference to marriage; or, more generally, to pair off couples on the basis of "love matches." This rests on the assumption that "free or individual choice" is more "civilized" and Christian than "arranged marriages." In most instances, for members of such a family to be regarded as nominally Christian and to be eligible for the benefits this implies, the stipulation is that polygyny must be abandoned. The Methodists on the Arnhem Land coast have been particularly concerned about this problem and the implications of such a decision, and have not forced the issue here. In general, where a choice must be made the husband usually tries to retain the youngest or the most attractive wife; and the hardship imposed on the others is not always taken sufficiently into account. Occasionally they may be allocated to unmarried men, but where there is a wide discrepancy in age, the union may barely be accepted as even a nominal one. Or the young wife, actual or betrothed, of an old man may be "given" by a European (for example, a missionary) to a man nearer her own age. In many cases the original husband does not relinquish his sexual rights in a "forcibly" discarded or re-allocated wife, and refuses to recognize the new arrangement.

Nevertheless, marriage arrangements are still made between members of the two families concerned; or, at a minimum, between a man and the girl's parents, guardian(s) and/or brothers. And the taking up of responsibilities and obligations (with gift-giving) by a prospective husband is still vitally important, for "sophisticated" and unsophisticated alike. Agreement as to what constitutes an actual marriage remains virtually the same; the couple living together, sharing common responsibilities, and rearing children. The latter no longer underwrites marriage as it did in the wholly traditional setting, although it is still a factor to be taken into account. Further, since men are much more mobile spatially today (*e.g.*, for reasons of employment) than they were or are in a wholly aboriginal situation, and may consequently be absent from their wives for varying periods, the delegating of authority over such wives to the parents of either party or to a brother is more common. With some marked exceptions, sexual laxity does not appear to have increased to any extent in the contact situation, and it is possible that divorce is no more frequent. "Tribal" marriage or "customary" marriage must still be regarded as marriage in the sense of a socially sanctioned and ratified agreement with an expectation of relative permanency—that is, in contrast to casual liaisons or "sweetheart" relationships.

The authority of a man over his wife, and his legal rights, have not been varied in any appreciable way. Limitations have, however, been imposed on him in respect of violent treatment of her, and of punitive action in the case of her adultery or elopement, although the threat of force may be a sufficient deterrent. In the case of real or imagined injury, if it comes within the province of Australian-European law or Native (Welfare) ordinances (or regulations), a husband can approach European authorities asking them to restrain his wife, or punish her if necessary. Through the same channels, pressures can be brought to bear on a husband to maintain his responsibilities in relation to his wife and those children who are under age. A wife, too, may appeal directly to external authorities. She is still not in a position to sue directly for a divorce, nor to sever her relations with her husband simply by stating that she no longer wishes to live with him. But she can desert him. Of course she could do this under "tribal" conditions, but then the places to which she could escape were few, and she could be recovered by force and punished or killed. Today, the introduced system of law and order makes this last procedure difficult, dangerous or impossible. Furthermore, she is usually able to enlist the sympathy of a European (Administration officer, missionary or station manager).

In "outback" areas, in fact, in many cases a quasi-polyandrous situation developed. An aboriginal woman might be the mistress of a "white" station manager, stockman, drover, etc., attracted to him partly at least by the material goods he could offer her—which meant, in such circumstances, prestige as well. At the same time her aboriginal husband was forced to accept the situation or relinquish her altogether, since he was powerless to take action. This sort of triangle has been romanticized to some extent in Australian-European folklore, and certainly no less so today than in the past. One could say that if, traditionally, husbands have had the advantage over their wives as far as formal status and formal authority are concerned, in the contact situation in these areas the pendulum has swung quite a long way in the opposite direction.

The present case.

What information we have concerning the "tribal" marriage of Arthur Julama and Gladys Namagu suggests that arrangements were made in the customary way, possibly supported by European authority (although this is not necessary unless the female is a minor), and that the two lived together publicly as husband and wife. They were doing so at the time when she became associated with the European drover;[15] and it was later implied that they were living together again in the Northern Territory, since Daly is reported as wanting her to be taken away from Arthur. At least two of the tests of a "tribal marriage" seem to have been fulfilled. There is no evidence to suggest that Arthur indicated his willingness to cede his marital claims to Gladys; according to the information available the contrary was the case. It was reported[16] that she told officials at the Warrabri settlement that she wished to remain with her husband. In the same statement it is noted that she subsequently changed her mind.

In traditional aboriginal terms, Gladys's opinion in the matter was largely irrelevant and Arthur still retained his legal rights to her. (It should be remembered that in our kind of society neither women nor men can dissolve a marriage merely by expressing a wish to do so.) In the contact situation this same position holds, but it was influenced by the external support she could enlist. Whatever she might do, even to the extent of living with some one else, did not alter Arthur's "legal" claims and rights over her unless he was prepared to relinquish them. The last point is a delicate one, since external pressure could

15 *West Australian,* 14th August 1959.
16 *West Australian,* 19th August 1959.

be, and perhaps eventually was, brought to bear on him to do this. In the contact situation some special legal sanction in European terms should have protected him here.

Marriage, in the Australian-European setting, is relatively easy to enter into but relatively difficult to dissolve. Common consent of both parties provides insufficient cause for divorce, and may even militate against it. In the case of aborigines or part-aborigines married according to Christian rites or in a civil fashion, divorce proceedings could presumably be instituted in an ordinary way—through legal channels. In the above case, however, where "tribal" marriage is involved, there should be some provision for or official recognition of divorce proceedings in which the complainant (Gladys or Arthur) could present his or her case, with an opportunity for the defendant to respond, and for an impartial body to determine on the basis of the evidence whether or not the marriage should be dissolved.

The fact that a European was involved as a third party in this case is, ideally, reason enough to support the suggestion of orthodox divorce proceedings. I am not suggesting that this should be applied in all cases. In many situations where only unsophisticated aborigines are concerned the traditional or quasi-traditional procedure should be sufficient. But where a European or a sophisticated aboriginal or a part-aboriginal is involved, and where the circumstances relate to an environment not entirely aboriginal, then there should definitely be some safeguard in respect of "tribal" marriage. As the position stands, there are too many loopholes to encourage abuse. That is, the assumption is that a "tribal" marriage holds good only when it does not conflict with European interests, and that an aboriginal husband (or wife, though this situation is less likely to arise) has no rights in regard to his wife should a "white" man take a fancy to her.

Whether or not Gladys was a ward is irrelevant here, as is her age. If "tribal" marriage is officially acknowledged, as it is for the purposes of social services, then permission to marry, on the part of the Director of Welfare or any other person, is also irrelevant unless her "tribal" marriage is annulled. The Minister for Territories should not be in a position to say[17] that Gladys would have to wait six months to make up her mind whether she really wanted to marry Daly, particularly since he himself had drawn attention to the fact that she had been "for some years past . . . permanently allied with an Aboriginal named Arthur in a tribal marriage."[18]

17 As reported in the *Sunday Times* (Perth), 23rd August 1959.

18 Press statement attributed to the Hon. P. Hasluck, Minister for Territories, 21st August 1959.

In aboriginal and in European terms, the existing marriage should have been dissolved before she was able to re-marry. All reports consistently stated that Arthur was her "tribal husband"; and if her status as a "tribal" wife has been overridden or ignored, what are the implications regarding the vast number of aboriginal marriages in the Northern Territory as elsewhere?

On the other hand, if the legitimacy of "tribal" marriage were upheld, at least as an interim measure, subject (as "wardship" is) to review in the context of movement toward "assimilation", this would mean that when Gladys married Daly she did so bigamously unless her previous "tribal" marriage had been annulled. In the light of what has been said here, a minister of the Church who married them in these circumstances could be viewed as committing an offence, in moral even if not in legal terms.

Postscript.

On 31st December 1959[19] it was reported that the Director of Welfare had "decided not to object" to the application of Daly and Gladys to a Darwin magistrate for their right to marry; "the matter will not now go to court"; the pair "are free to marry when they wish."[20]

Michael Daly and Gladys Namagu were married in the Roman Catholic Church at Darwin, and the Catholic Bishop of Darwin (Bishop O'Loughlin) issued a press statement on 1st January 1960, after the marriage had been solemnized. It is not my intention here to enter into a controversy over a Church ruling. The points set out in this article are straightforward enough, and need no elaboration in this context.

19 Noted in *West Australian,* 1st January 1960.

20 The reason given for this was a ruling from the Attorney-General's Department in Canberra, to the effect that under section 15 of the *Welfare Ordinance* the Director of Welfare for the Northern Territory had no jurisdiction over aborigines from Western Australia who had reached the age of 21 years (correspondence, Director of Welfare, Northern Territory, to R. Berndt, 30th December 1959). Similarly I understand that the Commissioner for Native Welfare in Western Australia has no jurisdiction over Western Australian aborigines living in the Northern Territory. Mr. Middleton, Commissioner of Native Welfare in Western Australia, assures me (22nd January 1960: DNW 537/45) that if this matter had arisen in Western Australia, he would have instituted proceedings and authorized a complaint to be issued charging Daly with having committed an offence against section 47 (1) (b) *et seq.* of the Native Welfare Act 1905-1960, unless Arthur had "voluntarily and publicly renounced his tribal marriage to Gladys." If the offence had been repeated he would have been charged under the provisions of section 47 (2) (b) of that Act.

The Bishop's press statement notes that:

> "when two parties seek to be married in a Catholic Church the priest must first ensure that the requirements of both Church and State are satisfied"; that prior to 1st January 1960 "the priest would have been breaking the law, if he were to assist at the marriage"; but that when the Director of Welfare withdrew his objections the position was changed: "As far as the law of the State is concerned there is no legal barrier to the marriage. The laws of the Northern Territory do not regard a tribal marriage of one of the parties as a bar to contracting a legal marriage with a third party. *This is an anomaly which should be rectified as it treats with scant respect the marital status of the majority of Aborigines in the Territory.*"[21]

The Bishop, however, did not apparently take this into account when he approved of the marriage, nor did he raise the question elsewhere. The statement continues:

> "The requirements of the Church are that both parties are free before God to marry and that they conform to ecclesiastical law . . . It might appear that in the case of Gladys her previous union with Arthur would constitute an impediment to her contracting marriage with Daly.
>
> We do not discuss here whether this union was regarded as a tribal marriage or not. The Church respects the binding force of a valid tribal marriage, and the bond of such a marriage constitutes a bar to marriage in Church to a third party. In fact Church law gives more status to tribal marriage than does the law of the Northern Territory.
>
> However, in the particular case of Arthur and Gladys close investigation revealed that there were lacking certain conditions which are required before a tribal marriage or for that matter a legal marriage can be recognized by the Church as a valid natural marriage. From this we conclude that as far as the Church is concerned Gladys is free to marry" (This paragraph appears in capitals.)

This rather ambiguous statement underlines quite clearly the disregard for the circumstances of the case, and the need for something more than lip-service to be paid to the status of aboriginal "tribal" marriage. Practical acknowledgment is what is required here. The loophole is, apparently, the use of the tricky word "valid", which

21 My italics.

of course is open to varying interpretation. The "justifying" paragraph in capitals unfortunately tells us nothing.[22]

The Director of Welfare has decided not to issue any statement, but has made it clear that he still holds the view that a marriage between Gladys and the European was not desirable on the grounds which have already been indicated.

It is not so much that a precedent has been created: This is no more than what has taken place since the first settlement of Europeans on this Continent. It remains, however, as a striking example of the overriding of aboriginal interests when they conflict with "white" interests. "Protection" may be an outmoded word in present-day administrative circles; but the need for it, as a vital part of aboriginal welfare policies, is highlighted by this case with its far-reaching implications.

R. M. BERNDT.*

22 The Director of Welfare, Northern Territory (correspondence to R. Berndt, 6th January 1960), has pointed out that the Bishop was possibly referring to the following: (a) Arthur is said to have told him that he did not intend his marriage to Gladys to be a lasting one; (b) in response to a question from an unspecified welfare officer in Western Australia, asking whether he would like to be legally married to her, Arthur is reported to have answered that he did not want a legal union at that juncture. This information is rather vague, and unsubstantiated. "Legal marriage", implying Australian-European civil or Church marriage, would be sufficiently unusual in Arthur's situation for him to be wary or at least unenthusiastic about it, especially under the emotional stress which he was quite possibly experiencing in regard to this case. The same would apply to any statement he may have made about his intentions. This does not alter the fact that they had been united for a relatively long period, right up to the time of this case, and apparently acknowledged each other as wife and husband respectively; the marriage had not at that time been dissolved.

* *M.A. (Syd.), Ph.D. (Lond.), Dip. Anthrop. (Syd.); Reader in Anthropology, University of Western Australia, 1553-.*