Two Laws: Indigenous Justice Mechanisms in Context

by Thalia Anthony*

Abstract

This article draws on Kociumbas' approach to inter-cultural historical debates to argue that the context of colonisation needs to be invoked in understandings of the resilience of Indigenous laws and societies and the instigation of inter-cultural justice mechanisms. Such a context gives meaning to both the strength and vulnerability of these mechanisms. This is illustrated through an examination of the operation of the Northern Territory's Warlpiri and Yolŋu laws, which draws on the perspectives of Elders in these societies, and the inter-cultural mechanisms of Law and Justice Groups and Community Courts. This research is grounded in historiographical literature, fieldwork observations, empirical evaluations and law reform in relation to these Northern Territory inter-cultural justice arrangements.

Keywords

Indigenous History; Indigenous Laws; Warlpiri; Yolŋu; Community Courts; Law and Justice Groups

Introduction

Identifying Indigenous agency has been a significant focus for historians and anthropologists undertaking research in relation to colonised peoples. Their research recognises the survival and adaptation of Indigenous communities in the face of colonial and postcolonial governance (see McGrath 1987; Cowlishaw 1988; Sahlins 1993). Such research points to the capacity of Indigenous peoples to influence postcolonial practices, rather than simply be passive objects of change. A number of historians and anthropologists who study Indigenous Australians in this way have bemoaned the portrayal of Indigenous people as victims. They present a narrative that underlines the affirmative experiences of Indigenous people. Jan Kociumbas embraces this narrative of resilience. However, it is the one-sidedness of these histories that is a point of contention for Kociumbas.

The contribution of Kociumbas, including in her introduction to and compilation of *Maps, Dreams, History*, brings into sharp relief the 'moral and political realities' of Indigenous lives as encompassing 'disease, starvation, death or exploitation' (1998: 55). She claims that colonisation involved much more than a subversion of Indigenous minds, able to be resisted through Indigenous agency, but also the decimation of Indigenous bodies (1998: 54). She drew the attention of students and historians to the deliberate attempts by colonisers to shatter Indigenous populations, cultures and laws, with devastating and genocidal effect. These attempts were by way of "overtly murderous acts such as shooting and poisoning", and not merely the "faceless killers" of small pox that historians and colonists have emphasised as the causal factors of Indigenous decline (Kociumbas 2004: 82). Kociumbas (1998: 54) informs us in *Maps, Dreams, History* of the need to identify 'context', including the assertion of colonial authority and power over colonised peoples, as well as

**** Thalia Anthony is a Senior Lecturer, Faculty of Law, University of Technology Sydney.***

'text', including colonial and Indigenous discourses, if we are to understand the nature of Indigenous and non-Indigenous colonial and postcolonial relations.

By accepting the destructive effect of colonial and postcolonial governance on Indigenous societies, Kociumbas is able to locate Indigenous resilience and agency in a meaningful context. It underlines their survival in contrast to assumptions that the colonisers and the colonised were both trapped in "mutually indecipherable rituals on the 'frontier'" (see Dening 1993). Such assumptions, according to Kociumbas, concealed the economic and strategic power imbalance favouring the colonisers and the brutal oppression inflicted on the colonised:

> The sheer speed of [the coloniser's] changes left little time for inland Aboriginal people to form alliances or make other adjustments preparing them for the white man's presence. Certainly, they employed their superior knowledge of the country to delay invasion, attacking bullock-drays, isolated stockmen, and the flocks and herds. All this had to be achieved without widespread use of whiteman's horse, though most did rapidly acquire his hunting dogs and adapt glass and metal to their weapons and tools (Kociumbas 2004: 89).

This article examines the resilience of Indigenous peoples and their laws, including their exchange with the Anglo-Australian criminal justice system. It considers how the Northern Territory's Warlpiri and Yolŋu societies have incorporated their perspectives and laws into criminal sentencing through the establishment of Law and Justice Groups and Community Courts. These initiatives are discussed in a context of the colonisation of the Northern Territory and the imposition of exclusive colonial jurisdiction on Aboriginal land and people. Against this historical context, Indigenous people have demonstrated capacity to adapt their laws, create intercultural justice mechanisms and engage with Anglo-Australian criminal justice processes. The context also speaks to the vulnerability of Indigenous input into the criminal justice system. The final section discusses the Northern Territory's judicial and administrative decisions to abolish Community Courts and defund Law and Justice Groups, as well as Commonwealth laws to prohibit customary law and cultural considerations in criminal sentencing.

Law, Colonisation and Power

British colonisers, despite their ideological claims to civility and order, initially imposed their rule through lawless, unaccountable and violent acts on the frontier. From 1788 until the early 1820s, the laws of England were not received into the colony of New South Wales, there was no legislative council to enact laws or Supreme Court to administer justice. In the early nineteenth century, New South Wales graziers commented that their "power to punish" was embodied through the execution of violence in their "first intercourse with the natives" (Robert Scott quoted in Harrison 1978: 22). In the Northern Territory, which was colonised in the mid-nineteenth century, the cattle barons and police

had almost free reign to punish Indigenous peoples.[1] In 1890 the South Australian Minister responsible for the Northern Territory, John Parsons, declared, "Leave the native question alone and the natives will be obliterated" (quoted in Donovan 1981: 184). Their punitive expeditions were sanctioned by a "rough and ready Northern Territory judicial system" until at least the 1930s (Read 1983: 24; see also Anthony 2003; Barnes 2002: 155). Northern Territory pastoralist Nat Buchanan (quoted in Buchanan 1933: 117) remarked:

> Every man was his own policeman; and the letter of the law was often ignored in favour of summary justice…[T]he white man far removed from the restraints of formal law sometimes perhaps rivaled his black brother in savage reprisal…Imprisonment for cattle killing was quite impracticable: and if no punishment were inflicted it would have been impossible to settle country.

Massacres of Aboriginal groups, including those committed by police, continued into the twentieth century in the Northern Territory, securing colonial rule and pastoralism.[2] The intensity of the process of Aboriginal dispossession of their land meant that there was little accountability or review. Kociumbas (2004: 88) states:

> The sheer speed and scale of land annexation as British settlement moved into the pastoral phase was another factor helping to create a climate where the sheer scale of destruction could be effectively blurred, rationalized, or denied.

The infliction of violence on Indigenous Australians was normalised and legalised through the colonial legislatures in the nineteenth century. To throw this point in sharp relief, the *Capital Punishment Amendment Act 1871* (WA) provided for the public execution of condemned Aboriginal peoples. Edmonds (2010: 151) described these public hangings, which had ceased for non-Aboriginal people by the 1860s in most colonies but continued for Aboriginal people until the twentieth century, as "exercises in terror specifically for Aboriginal people". They demonstrated the force of the colonial jurisdiction and its laws. Violence in the form of corporal punishments was also exclusively inflicted on Aboriginal offenders under the *Summary Trial and Punishment of Native Offenders Ordinance 1849* (WA) and the *Aboriginal Offenders Amendment Act 1892* (WA). Western Australian Premier George Leake (1901-1902) defended whipping on the grounds that "Aborigines" should "realise their responsibilities through their skins" (quoted in Haebich 1992: 73). Local justices of the peace, whose ranks included cattle station owners themselves, could order whippings for cattle killing and other minor crimes (Pedersen and Woorunmurra 2000: 31–2, 89; Melbourne Correspondent 1904: 5). "Flogging and chaining to a wheelbarrow" were punishments described by

[1] In 1899 there were fourteen police in the Northern Territory that spans 1.5 million square kilometres (Aborigines Select Committee 1899: 22). Consequently, pastoralists dealt with the 'natives' by taking "the law into their own hands" (station manager quoted in Reid 1990: 119).
[2] The 'Sandover Massacre' in the Northern Territory in the 1920s saw more than 100 Alyawarra people killed as the result of a station manager losing cattle (Johannsen 1992: 66; also see Elder 2003: 181-215; Green 1995).

parliamentarians in 1895 as "reduc[ing] the incidence of spearing of cattle" (quoted in Finnane and McGuire 2001: 284).

By the twentieth century, there was wide-scale employment of Aboriginal workers, especially in the north Australian cattle industry. Aboriginal people were either forced into employment or entered employment out of a need to survive (Anthony 2004). Force included whipping where workers left their place of servitude (Haebich 2000: 210). The South Australian Government, which was responsible for the Northern Territory until 1911, enacted the *Breach of Contract Act 1842* with the *Aboriginal Native Offenders Act 1849* to regulate Indigenous employment, including by allowing "whipping of up to two dozen lashes in lieu of or in addition to imprisonment" where an Indigenous worker objected to employment conditions or absconded (Thorpe 1992: 90–1). Long after the legislation was repealed, Justice Wells of the Northern Territory Supreme Court in the 1930s advocated "a good flogging" for Indigenous offenders due to their inferior intelligence and the fact they were getting "cheekier" and it was the only punishment they appreciated (quoted in Douglas 2005: 160).

As these violent punishments went into decline by the twentieth century, other forms of control ensured. In the late nineteenth century and first half of the twentieth century, race-based legislation, known as the Aboriginal Acts, authorised the Chief Protector of Aborigines to detain Aboriginal people on missions, settlements and cattle stations. For example, section 13(1) of the Northern Territory's Aboriginals Ordinance 1918 provided that:

> The Administrator may, by notice in the Gazette, declare any mission station, reformatory, orphanage, school, home or other institution established by private contributions to be an aboriginal institution for the maintenance, custody, and care of aboriginal and half-caste children, and shall thereupon issue a licence to the institution.

The Chief Protector was entitled "at any time to undertake the care, custody, or control of any aboriginal or half-caste" in "premises where the aboriginal, or half-caste is or is supposed to be". Section 67(1)(c) of this Ordinance further stated that the Administrator may make regulations "enabling any aboriginal or half-caste child to be sent to and detained in an Aboriginal Institution or Industrial School". Later, policies of assimilation placed Indigenous people under police surveillance and resulted in prisons becoming the new enclave for Indigenous containment (Hogg 2001). The courts imposed prison sentences with reference to 'neutral' criminal laws, securing the normative colonial framework, in order to demonstrate its equal application. Notwithstanding the appearance of formal equality, subsequent to the establishment of the Northern Territory Supreme Court, under the *Supreme Court Ordinance 1911* (Cth), very rarely were there successful prosecutions against pastoralists (Mildren 1994: 21; Austin 1988: 92). At the same time, the court "routinely ordered" the death sentence for Aboriginal people who committed serious crimes until the 1950s (Douglas 2009: 153).

During the 1930s and 1940s in particular there was disregard for submissions on Aboriginal laws and practices that would mitigate the seriousness of an offence in sentencing (Douglas 2005: 156; Mildren 2011: 119). This was evident in the trial of *Tuckiar v The King* (1934) in which the

Northern Territory Supreme Court ignored the Indigenous law that had been violated by the victim, Constable Albert Stewart McColl.[3] The defendant, Yolŋu Elder Dhakiyarr Wirrpanda, allegedly speared and killed McColl following his attempted rape of Dhakiyarr's wife, which is a serious breach of Yolŋu law (Read 2007: 09.5). In delivering the death sentence for Dhakiyarr, Justice Wells focused on the fact it was inflicted upon a 'white' police officer and sought to vindicate the 'white' officer's reputation by disallowing evidence of the rape. Ultimately, following much public campaigning, the High Court of Australia upheld Dhakiyarr's appeal against his conviction[4] and found that Justice Wells acted in a way prejudicial to the defendant (*Tuckiar v The King* 1934: 344). Justice Wells would continue to serve for a further fifteen years on the Supreme Court where he would persistently deny Indigenous sentencing factors.

The successor to Justice Wells, Justice Kriewaldt, who served between 1951-1960, sought to 'civilise' Indigenous defendants through imprisoning Indigenous offenders, rather than ordering the death penalty, because it assisted them in the integration process (Douglas 2004: 307). This reflected the social policy of assimilation in the Northern Territory from the 1950s, which also involved the removal of Aboriginal people from government-controlled reserves and settlements as well as cattle stations. Imprisonment, according to Justice Kriewaldt, would also teach Indigenous people of the superior, more rational punishments of the Anglo-Australian system. Since the 1960s, imprisonment has been used as a punishment disproportionately on Indigenous Australians (Eggleston 1976). They currently constitute over one-quarter of the prison population, despite representing two per cent of the general population (Australian Bureau of Statistics 2014). In *Indigenous, People, Crime and Punishment*, I explained how the over-representation of Indigenous Australians in prison reflects the imposition of a postcolonial legal order that acquires legitimacy from Indigenous criminality (Anthony 2013).

The imposition of a foreign legal order on local peoples is a form of epistemic violence, which manifested in the assertion of jurisdiction in New South Wales. In 1836 the New South Wales Supreme Court declared that colonial law was the only valid laws that applied to both settlers and Aboriginal peoples. The Court was deciding a case of two Aboriginal defendants, Murrell and Bummaree, who were attempting to be tried and punished by their own Aboriginal laws. The Supreme Court held that the defendants could not be tried and punished by their own laws because Aboriginal people are not "entitled to be recognized" as "sovereign states" that are governed by their own laws (*R v Murrell & Bummaree* 1836). The Court's reasoning was that Aboriginal peoples had not reached the 'numbers' and 'civilization' to form their own government and the first lawful possession of the land was by the King of England. Accordingly, the defendants were tried by the Supreme Court. In his judgment notes, Burton J stated that Indigenous practices "are consistent with a state of the grossest darkness & irrational superstition" and employ "the wildest most indiscriminatory notions of revenge" (Burton 1836).

---

[3] The death penalty was not mandated by statute. In sentencing Dhakiyarr, Justice Wells refused to mitigate the death penalty as permitted by the *Crimes Ordinance 1934* (Cth) as he believed this legislation to be ill conceived in its operation on Aboriginal people (see Douglas 2005: 162).

[4] This was largely due to the fact that a retrial could not be fairly conducted in light of the media campaign against Dhakiyarr (*Tuckiar v The King* 1934: 344).

Over 150 years later, the High Court of Australia reiterated the exclusivity of Anglo-Australian criminal laws. It determined in *Coe v Commonwealth* (1993: 115) that despite the common law's recognition of native title in *Mabo v Queensland* (1992), it cannot recognise Aboriginal criminal laws because it would amount to residing a limited kind of sovereignty in Aboriginal people that would be adverse to the Crown's sovereignty. Rather, Aboriginal people are only entitled to rights that flow from the laws of the Commonwealth, the State of New South Wales and the common law. The High Court in *Walker v New South Wales* (1994) dealt with a defendant who was contesting the jurisdiction of the New South Wales Supreme Court, and sought to be tried by his own Aboriginal laws, on the grounds that Aboriginal criminal laws can coexist with the common law criminal system. The Court held that Aboriginal criminal law "was extinguished by the passage of criminal statutes of general application" and "English criminal law did not, and Australian criminal law does not, accommodate an alternative body of law operating alongside it" (1994: [6]).

The Warlpiri and Yolŋu law systems

Despite the Anglo-Australian legal system's claims to universality and non-recognition of Aboriginal legal authority, Aboriginal laws survived across most Aboriginal societies in the Northern Territory. The survival had varying degrees of adaption or yielding to the coloniser's legal order.[5] It reflected an inconsistent colonial project in which law enforcers adopted different approaches to Indigenous recognition and engagement (Douglas and Finnane 2012) and, consequently, a diverse range of Indigenous experiences ensued (Rowse 2014). Australian frontiers were not uniformly established. They evolved at different times, in diverse policy and economic contexts and across different geographies, precipitating a range of relationships between the coloniser and the colonised (Rowse 2014: 310). Large parts of the Northern Territory colonised Indigenous people through pastoralism, welfare settlements and ration depots. This provided Indigenous people with opportunities to remain as collectives, practice laws and even remain on country (Anthony 2003). The influence of humanitarian practices when the Territory was occupied from the late nineteenth century, and the demand to recruit workers for cattle stations meant that an annihilation approach to Indigenous populations could not be sustained. Rather, pastoralists had an interest in retaining Indigenous relationships and connections with the land in order to secure a dependable labour force (Anthony 2004).

The Indigenous laws and local justice initiatives documented below primarily relate to Warlpiri people in Lajamanu – a community for which I have conducted fieldwork over five weekly visits since 2008. There are also valuable insights provided by Yolŋu Elders from Arnhem Land, which have been recorded and documented in texts. With respect to Lajamanu, it comprises of approximately 1000 people, predominantly Warlpiri people. It came into being as a welfare settlement – known as Hooker Creek – in the 1950s. In 1948 the

[5] In 1984, Maddock (237) claimed that the body of norms and the system of authority in Aboriginal societies has been threatened. He nonetheless viewed that there was still capacity for survival of laws, especially where Aboriginal people retained their connections to the land, including as a result of the land rights legislation in the Northern Territory under the *Aboriginal Land Rights Act 1976* (Cth).

Native Affairs Branch of the Federal Government decided to displace Warlpiri people from Yuendumu (a settlement 600km south of Lajamanu and 280 kms west of Alice Springs that was becoming over-crowded). Hooker Creek/Lajamanu was formed as a settlement for Warlpiri people on Gurindji country (Turner-Walker 2011). Warlpiri people were able to practice their laws and ceremonies on land surrounding Lajamanu, following consent from Gurindji for custodianship.

The complexities and purposes of Indigenous laws counteract the colonial view that "the blacks own no law themselves but the law of might" (Palmer 1903: 213; Kowald and Johnston 1992: 60) and that the Indigenous laws were based on "irrational superstition" (Burton 1836). Indigenous laws form strict regulatory systems for governing relationships to land, culture, kin and ceremony (Gaykamangu 2012: 238; Loy 2010; Bern 1979: 125, 131; *Milirrpum v Nabalco* 1971). The Indigenous law process follows "clear codes of practice" for dispute settlement within each Indigenous community (Calma 2007: 78; Australian Law Reform Commission 1986: [499]).

In a filmed documentary on Warlpiri laws, Warlpiri people in Lajamanu (Central Australia) conveyed how their punishment process operates to maintain the strength of Warlpiri communities, laws, ceremonies, land, language and relationships among Warlpiri skin groups (families) (Jampijinpa in Loy 2010). In several publications, Yolŋu Elders have recently described the intricate nature of Yolŋu legal system as it relates to criminal justice (Gaykamangu 2012; Gondarra 2011; Gaymarani 2011). They testify to its resilience in light of colonisation and over thousands of years. Their laws that relate to offending, and which are particular to Yolŋu people in Arnhem Land and part of their much broader system of law, define punishable offences, the various forms of punishment, the process of trial and punishment and how the laws relate to their broader relationships. Given the history of colonisation, the strength of Aboriginal laws and communities' endeavour to engage in two-way dialogue with Anglo-Australian law makers, discussed below, is remarkable. However, as this article demonstrates in relating Kociumbas' historical approach, the colonial context also points to the vulnerability of Indigenous laws in the prevailing Anglo-Australian criminal justice system.

At Lajamanu, the continuing operation of Warlpiri law is evidenced by the strength of community relationships and the Warlpiri perceptions that their community is safe (Loy 2010).[6] Warlpiri *yawaru manu* (punishment) is focused on achieving a resolution among skin groups. The punishment is determined by a meeting of the different skin groups that include the offender, victim and their families. It can require that the offender undergo ceremony. Where the punishment of spearing (in the leg) is ordered following a serious offence (often homicide), it is concluded with an apology and a hug or shaking of hands among the skin groups: "Then it's finished – not to be carried on. We're back to square one again" (Japanangka in Loy 2010). Warlpiri Elders in Lajamanu attribute very low levels of violence to the "strength of Aboriginal law and our people's respect for it" (Loy 2010). Japanangka asserts that the Warlpiri system of law

[6] It is difficult to acquire data of levels of crime in individual small Indigenous communities such as Lajamanu. Court lists do not cover all offending, especially more serious offences that tend to be heard in towns or cities, such as Katherine, Darwin or Alice Springs. Furthermore, violent offending that is of concern to a community may go unreported. On some of the challenges in collecting crime data for individual communities, see: Anthony 2010.

shapes “everything we do”: “It is with us, forming the guideline for our life from when we’re born to when we die . . . It is our history, it is our story, our ceremony and our court system” (quoted in Loy 2010).

Practice of two Laws: NT Law and Justice Groups and Community Courts

Warlpiri and Yolŋu societies have sought to negotiate with the Anglo-Australian criminal justice system to further their well-being and laws. Since the 1970s they have supported “two-way law” (or a “two laws system”), including through the development of governance and justice mechanisms that engage Indigenous and non-Indigenous laws (Napurrurla 2006). Originally, the two-way law concept was situated in the relatively new “transition from an autonomous world” to a colonising world (Austin-Broos 1996: 3). Central Australian Aboriginal people were forced to “engage in the practices of European orders that can come to dominate their lives” (1996: 3). In the 1970s, two-way law was regarded as an inevitable, and unfortunate, occurrence that forced Aboriginal people to participate in white fella laws (1996, 3; Maddock 1977: 27).

Since the 1970s, two-way law and governance has become an aspiration for Aboriginal people in the Northern Territory, in terms of seeking to continue to practice their laws against the dominant ‘one law’ white system. Austin-Broos (1996: 6) wrote that it marks a passage between white and blackfella ontologies.[7] In the mid-1970s, the Warlpiri Lajamanu Council was the first Community Government Council to be formed in the Northern Territory (Napurrurla 2006). It was able to address Warlpiri concerns, such as maintaining an alcohol-free community, through its own method of governance while also working within and with non-Indigenous governing structures (Katherine West Region 2009: 5). Non-Warlpiri government staff, in varying degrees, also adapted to Warlpiri ways of conducting business and different concepts of time, place and relationships. The research conducted in Yolngu communities by Nancy Williams shows how Indigenous people are willing to engage in two-way law. Yolngu are willing for the Anglo-Australian law to run its course provided that they can subject their members to Aboriginal law punishment processes over matters of community importance (Williams 1987). More recently, Reconciliation Australia (2013) describes two-way law as Indigenous people “negotiating a pathway forward” by achieving “a workable balance between maintaining cultural integrity and maximising their self-determination” as well as ensuring compliance with laws in white society. In relation to the Top End, Galarrwuy Yunupingu (1998) states that two laws—Yolŋu and Balanda (‘white’) — is all about “the struggle we have had for Yolŋu law to be recognised” in relation to their governance, law and land tenure systems.

In Warlpiri and, to a lesser extent in Yolŋu communities, two-way law is encapsulated in Law and Justice Committees and Community Courts. In 1995 Law and Justice Groups were recognised by the Northern Territory Government in the Aboriginal Law and Justice Strategy, lasting until 2005.[8] The Strategy provided a community justice framework to maximise community participation in the administration of justice by facilitating Aboriginal Law and Justice groups,

[7] Austin-Broos’ research is based on the Aranda people at Hermannsburg in Central Australia.
[8] This Strategy was the Northern Territory Government’s response to the recommendations of the Royal Commission into Deaths in Custody (see Martin 2007: 19).

Aboriginal women in dispute resolution practices, Aboriginal night patrols and safe houses (see Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007: 180-183).

Law and Justice Committees originated as a community initiative. For example, in 1997 the former Lajamanu Community Government Council and the Lajamanu Tribal Council wrote to the Chief Minister of the Northern Territory, the Minister for Police and the Minister for Aboriginal Development to establish a forum to bring their 'two laws' together in a practical and meaningful way. The Lajamanu Law and Justice Committee was established in 1998 with substantial resources devoted by the community. The Committee drew up a plan of two-way justice that identified the means to act as an interface between the community and the myriad of government agencies involved in the provision of law and justice services, which was signed by the Territory and Commonwealth Governments and community organisations in 1999. The Warlpiri Law and Justice Committees – known as the Kurdiji (also spelt 'Kurduju' and meaning 'shield' and 'protection of the community') – operate in four Central Australian communities: Ali Kurung, Lajamanu, Yuendumu and Willowra. These committees came together in 2001 to form an umbrella Kurdiji Committee.

In 2014, the Lajamanu Kurdiji continues as a group of senior men and women who foster respect for Warlpiri law and non-Warlpiri law and justice within the community (see Lajamanu Law and Justice Group 2014: 6). It is involved in initiation ceremonies in which young men and women are taught knowledge and to uphold their law. It also engages with the courts of summary jurisdiction by providing pre-sentencing reports to courts on defendants in the community. The Kurdiji are responsible for the Aboriginal Night Patrol and Law and Justice Plans, which seek to promote negotiations between the community and government bodies, the police, North Australian Aboriginal Justice Agency and the Central Land Council. Warlpiri women from Ali Curung, Gwen Brown and Marjorie Hayes, depict their Kurdiji Committee as managed by Elders and traditional owners who are responsible to the community, and make decisions and resolve disputes. They work with the 'Kardiya' ('white') officials in the criminal justice process (the judge, secretary, jury, lawyers) in reaching mutually agreeable outcomes (quoted in Reconciliation Australia 2013). A preliminary analysis of Lajamanu court lists reveals positive outcomes flowing from the Lajamanu Kurdiji, including a 50 per cent reduction in overall offending rates in the period in which the Kurdiji convened.[9] By contrast, Northern Territory imprisonment rates have increased by 72 per cent over the same period.[10] These statistics match our observations that Lajamanu has become a safer community with the operation of Kurdiji because members of the community feel accountable to the Kurdiji and the Indigenous authority structures that support its practices (Anthony and Crawford 2014).

Community Courts also provide an Indigenous-initiated avenue for greater Indigenous engagement in the justice system. They engage Elders to

[9] This is based on court listings data provided by the Northern Territory Supreme Court and discussed in Crawford (2012). The author would like to thank Will Crawford for providing information on aspects of Law and Justice Groups and Community Courts.

[10] These results are not conclusive because they are not matched with a comparable control group or account for a wide range of variables affecting the reporting and prosecution of crime apart from the role of Kurdiji Group.

convene in the court of summary jurisdiction during a sentencing matter and voice their opinion on the nature of the offence, offender and provide advice on sentencing options. Experimentation with community involvement in sentencing through local advisers began in the Northern Territory in the 1980s (Bradley 2005: 1). In 2003 in Nhulunbuy (North East Arnhem Land), respected Yolŋu educator, linguist and community worker Raymattja Marika approached the Court of Summary Jurisdiction requesting Yolŋu participation in the court process (Blokland 2007: 7). At around the same time, the then Chief Magistrate Hugh Bradley entered discussions with Yilli Rreung Council in Darwin that resulted in a trial community court project in Darwin, Nhulunbuy and the Tiwi Islands. This involved community Elders informing the local courts on sentencing considerations for minor offenders. The Community Court Guidelines, which were set down for the Darwin Community Court in 2005, and have been adapted in the Top End and Central Australia, state that Community Courts seek to provide more "effective, meaningful and culturally relevant sentencing options, increase community safety, decrease rates of offending, and reduce repeat offending and breaches of court orders" (Bradley 2005: 2).

Magistrates had discretion as to when and if Community Courts convened. Until 2012, they sat in a very small portion of sentencing matters. In the Community Courts, the Elders would communicate directly with the Aboriginal defendant and inform them of the wrongfulness of their actions and its ramifications for the community and relationships. The Community Court panel members in East Arnhem Land were encouraged to communicate primarily in the local language, especially when addressing the offender.[11] It was a relatively informal process that encouraged better understanding of the impact of offending by the offenders, victims, their families and the community. Ultimately, however, the presiding Magistrate would determine the sentence and whether to accept the advice of the Community Court.

From my fieldwork observations of the Yuendumu Community Court and interviews with participants, Community Courts play an important role in engaging the offender and conveying the wrongfulness of the act under Warlpiri law. Given that Community Courts sit as local courts, they did not have the capacity to provide input into sentences for serious offenders (such as those responsible for homicide) that are highly significant for the community. For these offences, exile (including in prison) is compatible with Warlpiri punishment. However, for many offences that the Community Courts dealt with, exile would not have necessarily been the community's preferred response. The Community Court was often made to feel tied between a choice of a short or long prison term because other court participants were of the view that the offender's criminal history required imprisonment. Property offences, for example, would be ideally resolved through a gesture of recompense to the victim, which is not a sentencing option commonly used and increasingly being sentenced by way of imprisonment. The difficulties for the Community Court to heed to Warlpiri forms of punishment is further complicated by the fact that there are sometimes no equivalent offences in Warlpiri law, such as many regulatory driving offences (for example, unlicensed or unregistered driving). Nonetheless,

[11] From my observations, the Court engaged its own interpreter when one was requested and available, so that discussion between the Community Court participants could be interpreted in English and the local language.

the Community Court, was regarded at Yuendumu as an opportunity for the sentence to reflect the community's regard for the offender and the offence.

Findings from three evaluations of Community Courts have also pointed to positive outcomes. In 2006, a survey of users of the Community Courts program in Darwin and the Tiwi Islands found that 60 per cent of respondents believed that the Community Court model increased community participation in sentencing and enhanced the procedures of the Court of Summary Jurisdiction (see Blokland 2007: 11). The role of Elders was also seen to provide valuable assistance within the court process, and to provide a sense of community responsibility and accountability for the joint decisions made by the Court (Blokland 2007: 10-11). Two empirical evaluations of Community Courts found that reoffending rates for participants are lower than in mainstream courts, and there was an increased use of on-country probation options (Suggit 2012: 26; Blokland 2007: 15). The latter sentencing option was valued because it reduced the availability of alcohol to the offender.

Nonetheless, some Yolŋu Elders feel that Community Courts were too limited in their scope to impose Yolŋu law. Gaymarani (2011: 299) contends that their effectiveness requires complete jurisdiction over the sentencing of local members, rather than operating in an ad hoc manner at the discretion of the Magistrate. He suggests that all courts of summary jurisdiction while sitting in community should be constituted by Indigenous community members and apply Indigenous law:

> The people of Arnhem Land do not want the normal Court of Summary Jurisdiction. The Court of Summary Jurisdiction should always sit as a Community Court when in Arnhem Land. This Ngarra law should be the central component of the Community Court when it sits in Arnhem Land. This is one way that the Australian law and the Ngarra law can work side by side (Gaymarani 2011: 299).

Gaymarani's views on extending the scope of Community Courts indicates that they do not give full expression to Indigenous laws. At the same time, he recognises that by universalising Community Courts in the Court of Summary Jurisdiction, they have the potential to be compatible with Anglo-Australian law and procedure. Historians have theorised the involvement of Indigenous people in formal justice mechanisms as a common meeting place for Indigenous people and the state, which reflects continuity and change. Some historians and anthropologists represent these types of formations as *autonomous* forms of Indigenous "cultural production" (Cowlishaw 1988; Sahlins 1993). Cowlishaw regards it as part of an adaptive process, whereas Sahlins regards them as a form of opposition or resistance (see Morphy 2008: 121). Others such as Merlan (1998: 180-181) characterise these mechanisms as arising from "intercultural production", which is invariably "unequal" in postcolonial society. Appreciating the context of legal inequality resonates with Kociumbas' historical analysis of how 'white' society has dominated Indigenous and non-Indigenous relations. The vulnerability of the Yolŋu laws following the Northern Territory Intervention speaks to the uneven context. The history of dispossession and the universal application of colonial criminal laws provides a historical context for understanding the current attempts by the state to curtail Indigenous justice mechanisms, which is illustrated in the following section.

Reinventing historical context of dispossession: one way law

Kociumbas' identification of the inequality in inter-cultural exchanges reverberates in decisions by Anglo-Australian law makers to restrict two-way justice processes. Yolŋu people acknowledge that the current two-law system is at the mercy of white governing structures, administration and laws. Galarrwuy Yunupingu (1998) asserts: "although Yolŋu law has stability, stays the same, the Balanda law changes all the time and can wipe away our rights with the stroke of a pen". This is indeed what happened in relation to the operation of Community Courts, and to some extent Law and Justice Groups, as this section addresses. Jampijinpa from Lajamanu articulates his frustration with the current failure of 'white' law to accommodate Warlpiri law, especially in relation to the practice of Warlpiri punishment (Yawaru manu):

> Warlpiri system is very strong, and Warlpiri system is really important to us. We've got to teach our children. But how can we teach our children when we start off with one thing, allowed, on one hand, to be free to teach our children while we are tied up with the other hand. The government won't let us do those things any more now, which is really bad for our people. Then I think when we start breaking their law, they also break our law too! But we get punished by their law, they don't get punished by our law. So what is the difference here? They walk away free! (quoted in Loy 2010).

In 2011, the operation of Community Courts in adults Courts of Summary Jurisdiction ceased due to legislative interpretation and administrative changes. Then Northern Territory Chief Magistrate Hillary Hannam (2013: 6) declared that sections 104A of the *Sentencing Act 1995* (NT) (prior to its amendment in 2014) and 91 of the *Northern Territory National Emergency Response Act 2007* (Cth) (now incorporated in section 16AA of the *Crimes Act 1914* (Cth)) precluded the operation of Community Courts. Community Courts continued to operate in Youth Justice Courts until 2012, when the Northern Territory Attorney-General disbanded the Community Court program. The supposedly offending section 104A regulates the reception of evidence of Aboriginal customary law and practices. It required procedural notice and form requirements for the admission of this evidence to a sentencing court (namely disclosure of the evidence to the other party with reasonable notice and that the evidence be given on oath, by affidavit or statutory declaration). Through enacting this provision, the Northern Territory Government sought to ensure the 'authenticity' of evidence of customary law, give the other party adequate notice to seek evidence and allow scrutiny of the evidence in cross-examination (Woodroffe 2006: 6; Toyne 2004).

The wording of section 104A of the *Sentencing Act* stated that the section applies to the receipt of information in relation to "Aboriginal customary law" or "views expressed by members of an Aboriginal community". This contravened s 10 of the *Racial Discrimination Act 1975* (Cth) by making the evidential procedure only applicable to Aboriginal people. In April 2014, the Northern Territory Government passed the *Justice and other Legislation Amendment Act 2014* (NT) to remove the section 104A(1)(b) provision that extends the notice and form requirements to the views of Aboriginal community

members about the offender or the offence, which arguably include submissions of Community Court panel members (see Elfrink 2014). In another publication, I contend, with Will Crawford, that interpretation of s 104A need not have been interpreted to undermine Community Courts as evidence may be admitted in other ways – a view shared by former Chief Magistrate Blokland (Anthony and Crawford 2014; Blokland 2007).[12] The legal interpretation was subjectively relied on to undermine the Courts and reflects a lack of appreciation of these courts' important role in providing Indigenous communities with a forum to contribute to the sentencing process. Notwithstanding the amendments of section 104A, neither the judiciary or the Northern Territory Government have reinstated Community Courts, thus sustaining the antimony between Indigenous and non-Indigenous laws.

The other basis posited by the former Chief Magistrate Hannam for the abolition of Community Courts was their failure to comply with section 91 of the then *Northern Territory National Emergency Response Act 2007* (Cth). This section prohibited cultural and customary law considerations in sentencing; specifically for the purpose of aggravating or mitigating the seriousness of the offence. Spiers Williams (2013: 8) states that this provision sanctions "intolerance to Aboriginal customary law and cultural practice" and undermined the "the ethos of pluralism" in Northern Territory Government policy. The Law Council of Australia (2006: 4-5) also described the reform as sentencing Aboriginal people as though they did not belong to a cultural group. Elsewhere, Will Crawford and I have posited that section 91 need not exclude the operation of Community Courts. There are a large range of matters, other than cultural or customary law issues in relation to the seriousness of the offence, that are relevant to these Community Courts' deliberations, such as the offender's character, prospects of rehabilitation and community sentencing options (Anthony and Crawford 2014).[13]

In relation to Law and Justice Groups, the Northern Territory Government's funding of these groups ceased in 2003, although pre-court conferencing, an important aspect of Kurdiji work, continued to be supported by Community Corrections until 2005. From my fieldwork at Lajamanu in 2008 and 2010, I observed how the withdrawal of Government support was a major blow for Warlpiri people and their confidence in two-way law. They felt aggrieved that

[12] Irrespective of the recent amendments to s 104A, our interpretation of the previous s 104A was that it need not have prohibited Community Courts. While the former s 104A(2) required that the court may only receive cultural information from a party to the proceedings, avenues existed to adduce this information. Assuming this is cultural information relevant to matters other than the seriousness of the offence and thus not caught under s 16AA of the *Crimes Act 1914* (Cth), where the parties consented to cultural information being adduced by the Community Court, the s 104A(2) requirement is overcome. In this way, either the defence or prosecution could have led the evidence and not the Community Court member. Further, notice and form requirements under s104A could have been fulfilled where the defence or the Community Court convenor gave the prosecution affidavits stating panel members' views on possible cultural matters (such as the dispensation of Indigenous law punishment). Alternatively, s 104A may have been satisfied if Community Court members gave cultural evidence on oath, and the prosecution was provided with an outline of the evidence prior to proceedings. This would have given the prosecution an opportunity to test any evidence of customary law or practice that may arise in evidence.

[13] The Northern Territory Supreme Court in *R v Wunungmurra* (2009) explicated that customary law and cultural practice may still be considered in relation to an offender's character, prospects of rehabilitation and the nature of the sentencing options.

while they were willing to make compromises in order to work within the criminal justice system, the Government was not willing to meet half way and provide a space for Indigenous laws or listen to Indigenous Elders with respect to law and order. Due to these concerns, in the last couple of years these groups have been revitalised through the support of the North Australian Aboriginal Justice Agency and the Central Land Council. There are currently four Law and Justice Groups involved in pre-sentencing in the Northern Territory: Lajamanu's 'Kurdiji' Law and Justice Group and the Yuendumu Mediation and Justice Group in Warlpiri communities in Central Australia, Wurrumiyanga's Ponki Mediators in the Tiwi Islands and Maningrida's Bunawarra Dispute Resolution Elders in the Top End. Their work continues to focus on protecting community members against crime, providing input into criminal court sentencing matters through pre-sentence reports and negotiating with governments and law enforcers.

Conclusion

Indigenous communities in the Northern Territory, especially among Warlpiri people, formed Law and Justice Groups and Community Courts to enable their participation in the justice process. They provided a 'liminal' space for the interaction of Indigenous and non-Indigenous laws (Blagg 2008: 140). Indigenous justice mechanisms engage Elders in the courts, promote community safety and foster Indigenous law and authority structures. Their existence speaks to the resilience of Northern Territory Aboriginal communities and their laws, especially in the context of violent dispossession and the assertion of the colonial jurisdiction. It also reminds us that the colonial enterprise in the Northern Territory was uneven and adopted both guises of colonial law enforcement and Indigenous law accommodation depending on the place, time and purpose upon which the frontier was forged. As discussed at the outset of this article, the context of colonisation is not a mere backdrop but gives meaning to the strength of Indigenous justice processes, including through its expression in a two-way legal arrangement.

Jan Kociumbas' work has provided a frame for understanding Indigenous resilience and agency in a society of postcolonial state dominance. The value of Kociumbas' body of work is its dialectical approach: it gives context to agency as well as gives context to the subordinate position of Indigenous initiatives and innovations to the settler state. Its limitation is that it does not explicate the varying guises and complexities of government policy and policy making. Kociumbas' theory may imply a uniformity in law enforcement approaches that overlooks the state's capacity for cultural accommodation. However, it is able to account for the exercise of jurisdiction as a mode of authority (Dorsett and McVeigh 2012) and through this lens sheds light on the vulnerability of Indigenous legal mechanisms. This vulnerability has become evident with the Northern Territory's judicial and administrative abolition of Community Courts alongside Commonwealth Government's legislative prohibitions on customary law and cultural considerations in sentencing.

References

Aborigines Select Committee. 1899. *Report of the 1899 Select Committee of the Legislative Council on the Aborigines Bill: Minutes of Evidence*. South Australian Parliamentary Papers, no. 77, 8 November, Auth. C. E. Bristow. Adelaide: Government Printer.

Anthony, T. 2003. 'Postcolonial Feudal Hauntings of Northern Australian Cattle Stations'. *Law.Text.Culture* 7: 277-307.
_____. 2004. 'Labour relations on northern cattle stations: feudal exploitation and accommodation'. *The Drawing Board: An Australian Review of Public Affairs* 4(3): 117-136.
_____. 2010. 'Governing Crime in the Intervention'. *Law in Context* 27(2): 90-113.
_____. 2013. *Indigenous People, Crime and Punishment*. Oxford: Routledge.
_____ and Crawford, W. 2014. 'Northern Territory Indigenous community sentencing mechanisms: an order for substantive equality'. *Australian Indigenous Law Review* 17(2): 79-99.
Austin, T. 1988. 'Looking Back'. In Dixon, V. (ed.). *Looking Back*. Darwin: Historical Society of Northern Territory.
Austin-Broos, D. 1996. '"Two Laws", Ontologies, Histories: Ways of being Aranda today'. *The Australian Journal of Anthropology* 7(1): 1-20.
Australian Bureau of Statistics. 2014. *Corrective Services, Australia, June Quarter 2014*, Cat No 4512.0. Table 1.
Australian Law Reform Commission. 1986. *The Recognition of Aboriginal Customary Laws*. Final Report, No. 31. Canberra: Australian Government Publishing Service.
Barnes. J. 2002. 'Crystallising Identities: The Imagining of the Centralian Patroller Tradition for Tourism Marketing Purposes, 1929-1958'. *Traditions in the Midst of Change, Proceedings of the Strehlow Research Centre Conference, 2002.* Alice Springs: Northern Territory Government, 151-67
Bern J. 1979. 'Ideology and domination: toward a reconstruction of Australian Aboriginal social formation'. *Oceania* 50: 118-32.
Blagg, H. 2008. 'Colonial Critique and Critical Criminology: issues in Aboriginal law and Aboriginal violence'. In Anthony, T. and Cunneen, C. (eds.). *The Critical Criminology Companion*. Sydney: Hawkins Press, 129-143.
Blokland, J. 2007. 'The Northern Territory Experience'. *Australian Institute of Judicial Administration Indigenous Courts Conference*, Mildura, 7 September. http://www.aija.org.au/Ind%20Courts%20Conf%2007/Papers/Blokland.pdf (accessed 23 August 2014).
Bradley, H.M. 2005. *Community Court Darwin Guidelines, and the general sentencing provisions in the Sentencing Act 2005 (NT)*. Darwin: NT Department of Justice. http://www.nt.gov.au/justice/ntmc/docs/community_court_guidelines_27.05.pdf (accessed 27 October 2014).
Buchanan, G. 1933. *Packhorse and Waterhole: With the First Overlanders to the Kimberleys*. Sydney: Angus & Robertson
Burton J. 1836. 'Notes for Judgment: R v Murrell & Bummaree'. *Miscellaneous Correspondence Relating to Aborigines*. State Records of New South Wales, 5/1161.
Calma, T. 2007. 'Integration of Customary Law into the Australian Legal System'. *Law in Context* 25(1): 74.
Coe v The Commonwealth (1993) 68 ALJR 110.
Cowlishaw, G. 1988. *Black, White or Brindle*. Melbourne: Cambridge University Press.
Crawford, W. 2012. 'Participatory action research: a tool for community legal education, crime prevention, activism and capacity building'. *National Association of Community Legal Centres Conference*, Adelaide, 31 August.
Denning, G. 1993. *Mr Bligh's Bad Language - Passion, Power and Theatre on the Bounty*. Cambridge: Cambridge University Press.
Donovan, P.F. 1981. *A Land Full of Possibilities: A History of South Australia's Northern Territory*. Brisbane: University of Queensland.
Dorsett, S. and McVeigh, S. 2012. *Jurisdiction*. Oxon: Routledge
Douglas, H. 2004. 'Assimilation, Lutheranism and the 1950s Justice of Kriewaldt'. *Australian Journal of Legal History* 8: 285-312.
_____. 2005. *Legal Narratives of Indigenous Existence: Crime, Law, and History*. Unpublished PhD thesis. University of Melbourne.
_____. 2009. *Aboriginal Australians and the Criminal Law: History, Policy,* Culture. Saarbrucken: VDM
_____ and Finnane, M. 2012. *Indigenous Crime and Settler Law: White Sovereignty after Empire*. Basingstoke: Palgrave Macmillan.
Edmonds, P. 2010. *Urbanizing Frontiers: Indigenous Peoples and Settlers in 19th-century Pacific Rim Cities*. Vancouver: University of British Columbia Press.

Eggleston, E. 1976. *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria, South Australia and Western Australia*. Canberra: Australian National University Press.
Elder, B. 2003. *Blood on the Wattle: Massacres and Maltreatment of Aboriginal Australians since 1788*. 3rd edn. Sydney: New Holland Publishers
Elferink, J. 2014. 'First Reading Speech: Justice And Other Legislation Amendment Bill (Serial 69)'. *Northern Territory Legislative Assembly Parliamentary Record*, No. 10, 12th Assembly, 1st Session, 11 February. http://notes.nt.gov.au/lant/hansard/hansard12.nsf/4d7545924cd0b81f692569a50000643b/545fe67a5fd5536069257cdd0020d6a1?OpenDocument&Highlight=2,104a (accessed 18 April 2015).
Finnane, M. and McGuire, J. 2001. 'The Uses of Punishment and Exile: Aborigines in Colonial Australia'. *Punishment and Society* 3(2): 279-298.
Gaykamangu, J.G. 2012. 'Ngarra Law: Aboriginal Customary Law from Arnhem Land'. *Northern Territory Law Journal* 2: 236-248.
Gaymarani, G.P. 2011. 'An Introduction to the Ngarra Law of Arnhem Land'. *Northern Territory Law Journal*. 1: 283-304.
Gondarra, D. 2011. 'Assent Law of the First People: Views from a Traditional Owner'. *National Indigenous Times*, 3 March, 24-26.
Green, N. 1995. *The Forrest River Massacres*. Fremantle: Fremantle Arts Centre Press.
Haebich, A. 1992. *For Their Own Good: Aborigines and Government in the Southwest of Western Australia 1900–1940*. Nedlands: University of Western Australia Press.
_____. 2000. *Broken Circles: Fragmenting Indigenous Families 1800–2000*. Fremantle: Fremantle Arts Centre Press.
Hannam, H. 2013. 'Current issues in Delivering Indigenous Justice: Challenges for the Courts'. *Australian Institute of Judicial Administration Conference*, Adelaide, 18 July. http://www.aija.org.au/Ind%20Courts%20Conf%2013/Papers/Hannam.pdf (accessed 23 October 2014).
Harrison, B. 1978. 'The Myall Creek Massacre'. In McBryde, I. (ed.). *Records of Time Past*. Canberra: Australian Institute of Aboriginal Studies.
Hogg, R. 2001. 'Penality and Modes of Regulating Indigenous People in Australia'. *Punishment and Society* 3(3): 355-379.
Johannsen, K.G. 1992. *A Son of 'The Red Centre': Memoirs and Anecdotes of the Life of Road Train Pioneer and Bush Inventor of the Northern Territory of Australia*. Morphettville: K. Johannsen.
Katherine West Region Remote Area Health Corps. 2009. 'Lajamanu'. Australian Government. http://www.rahc.com.au/sites/default/files/documents/community_profiles/Lajamanu%20Community%20Profile.pdf (accessed 23 October 2014).
Kociumbas J. 1998. 'Introduction'. In Kociumbas, J. (ed.). *Maps, Dreams, History*: *race and representation in Australia*. Sydney: University of Sydney.
_____. 2004. 'Genocide and modernity in colonial Australia, 1788-1850'. In Moses, D.A. (ed.). *Genocide and settler society: Frontier violence and stolen indigenous children in Australian history*. New York: Berghahn Books, 77-102.
Kowald, M. and Johnston, R. 1992. 'You Can't Make it Rain: The Story of the North Australian Pastoral Company 1877–1991'. Brisbane: Boolarong Publications with North Australian Pastoral Company
Lajamanu Law and Justice Group. 2014. *Kurdiji: 'Shield - to protect and discipline' – Lajamanu Visitor Guide*, Kurdiji Group, March 6. http://www.clc.org.au/files/pdf/KurdijiNEbook-6.pdf (accessed 21 October 2014).
Law Council of Australia. 2006. 'Submission to the Inquiry into the Crime Amendment (Bail and Sentencing) Bill 2006'. Submission no. 3. Commonwealth of Australia, 26 September.
Loy, D. 2010. *Bush Law*. Message Stick, Australian Broadcasting Corporation, 28 March. http://www.abc.net.au/tv/messagestick/stories/s2855782.htm (accessed 15 September 2014).
Mabo v State of Queensland (No. 2) (1992) 175 CLR 1.
Maddock, K. 1977. 'Two laws in one community'. In Berndt, R. (ed.) *Aborigines and Change: Australia in the 70s*, Canberra: Australian Institute of Aboriginal Studies, 13-32.
_____. 1984 'Aboriginal customary law'. In Hanks, P. and Keon-Cohen, B. (eds.). *Aborigines and the Law: Essays in Memory of Elizabeth Eggleston*. Sydney: Allen & Unwin, 212-37.
Martin, B. 2007. 'Customary Law – Northern Territory'. *Colloquium of the Judicial Conference of Australia*, 5 October.

http://www.supremecourt.nt.gov.au/media/docs/commonwealth_intervention.pdf (accessed 23 November 2014).
McGrath, A. 1987. *Born in the Cattle: Aborigines in Cattle Country*. Sydney: Allen & Unwin.
Melbourne Correspondent. 1904. 'Western Australian Slavery: A Disclaimer by Dr. Rentoul'. *The Advertiser*, Adelaide, 25 April: 5.
Merlan, F. 1998. *Caging the Rainbow: Places, Politics, and Aborigines in a North Australian Town*. Honolulu: University of Hawai'i Press.
Mildren, D. 1994. 'The Administration of Justice in the Northern Territory during the War Years'. *Journal of Northern Territory History*. 5: 21-36.
_____. 2011. *Big Boss Fella – All Same Judge: A History of the Supreme Court of the Northern Territory*. Sydney: Federation Press
Milirrpum v Nabalco Pty Ltd (1971) 17 FLR 141
Morphy F. 2008. 'Whose governance, for whose good? The Laynhapuy Homelands Association and the neo-assimilationist turn in Indigenous policy'. In Hunt, J., Smith, D., Garling, S., and Sanders, W. (eds.). *Contested governance: Culture, power and institutions in Indigenous Australia*. Canberra: Australian National University ePress, 113-152.
Napurrurla, Yulyurlu Lorna Fencer. 2006. 'Research Notes'. http://www.flinders.edu.au/art_museum_files/Documents/Exhibitions/Research%20notes%20final.pdf (accessed 27 October 2014).
Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. 2007. *Ampe Akelyernemane Meke Mekarle – 'Little Children Are Sacred'*. Final Report to Northern Territory Government.
Palmer, E. 1903. *Early Days in North Queensland*. Classics edn. Sydney: Angus & Robertson.
Pedersen, H. and Woorunmurra, B. 2000. *Jandamarra and the Bunuba Resistance*. Broome: Magabala Books.
R v Murrell & Bummaree [1836] NSWSC 35 (5 February 1836).
R v Wunungmurra (2009) 231 FLR 180.
Read, P. 1983. '"A Rape of the Soul so Profound": Some Reflections on the Dispersal Policy in NSW'. *Aboriginal History* 7: 23-32.
_____. 2007. 'Murder, Revenge and Reconciliation on the North Eastern Frontier'. *History Australia*. 4(1): 09.1-09.15.
Reconciliation Australia. 2013. 'Two Way Governance'. 31 May. http://www.reconciliation.org.au/governance/toolkit/2-2-two-way-governance (accessed 15 August 2014).
Reid, G. 1990. *Natives: Aboriginal-European Relations in the Northern Territory to 1910*. Melbourne: Melbourne University Press
Rowse, T. 2014. 'Indigenous Heterogeneity'. *Australian Historical Studies* 45(3): 297-310.
Sahlins, M. 1993. 'Goodbye to tristes tropes: ethnography in the context of modern world history'. *Journal of Modern History* 65: 1–25.
Spiers Williams, M. 2013. 'Why are there no adult Community Courts operating in the Northern Territory of Australia?'. *Indigenous Law Bulletin* 8(4): 7-11.
Suggit, D. 2012. *Joining Forces: A partnership approach to effective justice: community-driven social controls working side by side with the Magistracy of the Northern Territory – a review of Community Courts Northern Territory Government Pilot and Program 2005-2012*. A report to the Northern Territory Government, 10 August.
Thorpe, B. 1992. 'Aboriginal Employment and Unemployment: Colonised Labour'. In Williams, C. with Thorpe, B. (eds.). *Beyond Industrial Sociology: The Work of Men and Women*. Sydney: Allen & Unwin.
Toyne P. 2004. 'Second Reading Speech: Sentencing Amendment (Aboriginal Customary Law) Bill 2004'. *Northern Territory Secondary Reading Speeches*. http://www.austlii.edu.au/au/legis/nt/bill_srs/saclb2004448/srs.html (accessed 2 October 2014).
Tuckiar v The King (1934) 52 CLR 332.
Turner-Walker, J. 2011. *Clash of the Paradigms: night patrols in remote central Australia.* Masters of Criminal Justice thesis. University of Western Australia, Perth.
Walker v State of New South Wales (1994) 182 CLR 45.
Williams, N. 1987. *Two laws: managing disputes in a contemporary Aboriginal community*. Canberra: Australian Institute of Aboriginal Studies.
Woodroffe, D. 2006. 'Aboriginal Customary Law and the Sentencing Discretion by Courts in the Northern Territory'. *National Indigenous Legal Conference*, Sydney, 22–23 September.
Yunupingu, G. 1998. *Third Vincent Lingiari Memorial Lecture*, 20 August, Darwin.