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Law, Culture and Decolonisation: The Perspectives of Aboriginal Elders on Family Violence in Australia

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Abstract

Family violence within Aboriginal communities continues to attract considerable scholarly, governmental and public attention in Australia. While rates of victimization are significantly higher than non-Aboriginal rates, Aboriginal women remain suspicious of the 'carceral feminism' remedy, arguing that family violence is a legacy of colonialism, systemic racism, and the intergenerational impacts of trauma, requiring its own distinctive suite of responses, 'uncoupled' from the dominant feminist narrative of gender inequality, coercive control and patriarchy. We conclude that achieving meaningful reductions in family violence hinges on a decolonizing process that shifts power from settler to Aboriginal structures. Aboriginal peoples are increasingly advocating for strengths-based and community-led solutions that are culturally safe, involve Aboriginal justice models, and recognises the salience of Aboriginal Law and Culture. This paper is based on qualitative research in six locations in northern Australia where traditional patterns of Aboriginal Law and Culture are robust Employing a decolonising methodology, we explore the views of Elders in these communities regarding the existing role of Law and Culture, their criticisms of settler law, and their ambitions for a greater degree of partnership between mainstream and Aboriginal law. The paper advances a number of ideas, based on these discussions, that might facilitate a paradigm shift in theory and practice regarding intervention in family violence.

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Introduction

Family violence within Aboriginal communities has attracted considerable scholarly, governmental and public attention in Australia in recent years. It is widely accepted that rates of victimization are significantly higher than non-Aboriginal rates, and that Aboriginal women are amongst the most victimized groups in Australian society (Australian Institute of Health and Welfare (AIHW), 2018; Blagg, 2002; Blagg et al., 2015, 2018; Cheers et al., 2006; Cripps and Davis, 2012; State of Victoria, 2016). In sharp contrast to demands for a tougher response to violence against women, symbolized by 'carceral feminism' (Kim, 2018) and the Duluth Model (or Domestic Abuse Intervention Project) (Pence and Paymar, 1993), many commentators, including Aboriginal women, argue that family violence needs to be understood within an historical framework traversed by colonialism, systemic disadvantage, cultural dislocation, forced removal of children and the intergenerational impacts of trauma (Aboriginal and Torres Strait Islander Women's Taskforce on Violence, 2000; Atkinson, 1990a, 1990b, 1996, 2002; Australian Bureau of Statistics, 2016; Behrendt, 2002; Blagg,et al., 2015; Cheers et al., 2006; Cripps and McGlade, 2008; Dodson, 2003; Gordon et al., 2002; Kelly, 2002; McGlade, 2012; Nancarrow, 2003, 2010, 2019; National Aboriginal Community Controlled Health Organisation, 2006). It is also increasingly argued that family violence in Aboriginal communities requires its own distinctive suite of responses, 'uncoupled' from the dominant feminist discourse, that situates violence against women in terms of gender inequality, coercive control and patriarchy (Blagg et al., 2020; Nancarrow, 2006; State of Victoria, 2016; Wall, 2014; Yodanis, 2004). Our notion of 'uncoupling' here is similar to decoloniality theorist Walter Mignolo's (2017, p. 156) idea of 'de-linking' which, he argues, 'implies work at the fringes, at the border between hegemonic and dominant forms of knowledge … using the system but doing something else, moving in different directions'. We argue that a form of de-linking/uncoupling is taking place at a local level in Aboriginal communities, creating contested liminal spaces 'in-between' mainstream and Aboriginal ontologies and epistemologies, where settler and Aboriginal cultures interact. Aboriginal people, we suggest, are incrementally, but ineluctably, altering the 'directions' of policy and practice to accommodate their beliefs and systems of knowledge. We conclude that achieving meaningful reductions in family violence hinges on a decolonizing process that shifts power from settler to Aboriginal structures, and acknowledges the salience of Aboriginal Law and Culture in creating healed communities.

A fresh paradigm

There is strong support in the research literature, and law reform and policy reports (discussed later), for a fresh paradigm that enables Aboriginal peoples to develop their own solutions to family violence in their communities (see e.g. Aboriginal and Torres Strait Islander Social Justice Commissioner, 2006; Atkinson, 1990a; Law Reform Commission of Western Australia, 2006; Memmott et al., 2001; Northern Territory Law Committee, 2020; Wright, 2004). In this article we present findings from recently completed research exploring the considerable contribution Aboriginal Law and Culture can and, indeed, already does, play in minimising family violence. Aboriginal communities, particularly Aboriginal women's organisations working from within local cultural frameworks, have been energetic innovators, developing holistic, trauma informed programs that offer culturally and physically safe environments for victims (Blagg et al., 2018). However, these are often invisible to the colonial gaze, which only recognises certain accredited practices as constituting an adequate response to family violence. These tend to be those that fall within the dominant domestic violence paradigm which favours an expanded role for the police, courts and prisons, and women's refuges as exit points from violent relationships, and leveraging men into behaviour change programs through the threat of criminal sanctions.

This contribution to the debate on family violence draws on research funded by Australia's National Research Organisation on Women's Safety Limited (ANROWS)[2] on the role of Aboriginal Law and Culture in preventing and healing family violence (Blagg et al., 2020). It is also informed by a number of research projects in Aboriginal communities exploring alternatives to the mainstream justice system for victims, offenders and communities, driven 'from below' by Aboriginal women and their communities of care and support (see Blagg et al., 2018).

A note on language

We have adopted the terminology of 'family violence' rather than 'domestic violence' or 'intimate partner violence' as Aboriginal people regard it as encapsulating 'both the extended nature of Indigenous families and the kinship relationships within which a range of forms of Indigenous violence frequently occur' (Day et al., 2012, p. 105; see also Bagshaw et al., 2009; Council of Australian Governments, 2011, p. 2; Gordon et al., 2002, p. 29). The notion of family violence, Bundajung woman Judy Atkinson (1996, p. 5) argues, 'provides a greater contextual understanding of the intergenerational impacts of violence as its effects flow in-to and out-of our families'. Research in the remote Kimberley region of Western Australia (Blagg, 2008) found fifteen different uses of the term, encapsulating everything from domestic assaults through to clan feuds, jealous fighting, sister fights, neglect of children, 'humbugging' (bullying family members for money or services), wasting money on gambling, excessive use of alcohol and/or drugs and racialized insults. All these activities impinge on the health of family life as a whole, and it is the family/clan unit, rather than the sovereign, autonomous, western individual subject, that constitutes the irreducible core of

Aboriginal Law and Culture. The spiritual and emotional wellbeing of families remains the litmus test for healthy Aboriginal communities (Hovane, 2015; Dudgeon et al., 2014a, 2014b, 2014c).

We mainly use the term Aboriginal peoples, rather than Indigenous peoples, or Indigenous Australians, to refer to Australia's first peoples. Some reject the term 'Indigenous' as too generic and failing 'to respect their identify and preferences' (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 2018; UWA School of Indigenous Studies, 2017). However, we have retained the term where it has already been used in a text or where it refers to a broad collective, such as in 'Indigenous peoples' as a generic or global phenomenon. In adopting the plural form 'peoples' and 'communities,' we acknowledge the diversity of communities, cultures, laws, languages, kinship structures, histories over the 250 Aboriginal groups in Australia. We also acknowledge the preference of Aboriginal people to identify themselves by their language group and country (AIATSIS, 2018; Common Ground, n.d.; UWA School of Indigenous Studies, 2017). Where appropriate, we refer to a particular language group (Martu for example), and country.

Also, we have adopted the term Aboriginal Law, rather than 'lore' or 'customary law', to describe Aboriginal Laws. This is in keeping with the approach of Aboriginal scholars and some international documents (Behrendt et al., 2009; Hovane, 2015; McRae et al., 2003; Watson, 2014, 2015, 2018; The United Nations Declaration on the Rights of Indigenous Peoples, Art 34). Each Aboriginal community has its own Laws and, where possible, we will refer to the law of a particular community (e.g. Martu Law). By adopting the term 'Law' we do not equate Aboriginal Law with mainstream law, or seek to define it through the mainstream lens of 'law'. We do not assume a 'common understanding of what is meant by 'law'' (Toohey, 2006, p.186) and we respect the fact that there are layers of incommensurability between Aboriginal Laws and settler laws (Law Reform Commission of Western Australia, 2006, p. 19, 2005, pp. 49–54).

The notion of Culture, as defined by Aboriginal peoples, references the host of ways Law is enacted and passed on through an array of practices. For example, In the *Crocodile Hole Report,* the Kimberley Land Council and Waringarri Resource Centre (1991, p. 18) offer the following description of Aboriginal Culture:

> Culture is Dreamtime/Dreaming. It is knowledge, rules, memories, ceremonies, initiation, smoking, traditions, languages, corroborees, skin groups. It is practising Aboriginal Law. Aboriginal Law never been changed, not like *cadiya* (white) law, always changing.

For the majority of Aboriginal peoples, law and culture are simply 'facts of life' that govern the broad spectrum of social relationships and make daily life meaningful and intelligible (Australian Law Reform Commission, 1986; Law Reform Commission of Western Australia, 2005, 2006; Northern Territory Law Reform Committee, 2003, 2020). Davenport et al. (2005, pp. 7–8) explain the meaning of law for the *Martu* peoples of the Western Desert, Aboriginal Law:

> explains the world and how things have always been: the country, each person's source and role, and all of the many obligations that are owed to people throughout society. Everything finds its place within Law, as it is continuously revealed to people.

The Australian Law Reform Commission (1986, para.103) found in its seminal research on Aboriginal Law:

> A basic precondition for the recognition of Aboriginal customary laws is the simple assertion that it exists as a real force, influencing or controlling the acts and lives of those Aborigines (sic) for whom it is 'part of the substance of daily life'.

Aboriginal people are 'bound' by Aboriginal Law, and there are sanctions imposed when it is breached (discussed later). For Aboriginal people, Law does fulfill functions similar to the mainstream legal system. Aboriginal people believe that the threat of sanctions deter people from offending, reinforces social norms by displays of power, and also heals fractured relationships through demonstrations of remorse and punishment (Law Reform Commission of Western Australia, 2005). A recent inquiry into Aboriginal Law in the Northern Territory confirms its positive role, as documented by these earlier reports, stating that, 'Aboriginal law plays a significant and positive role in building community strengths and harmony. It plays a role in protecting and nurturing children…restoring people who have committed wrongs, protecting and healing victims, and resolving conflict.' (Northern Territory Law Reform Committee, 2020, p. 2).

However, while there is deepening recognition that Aboriginal Law and Culture has an important role to play in responding to and preventing family violence, less is known about the Aboriginal cultural mechanisms that may be harnessed to promote the safety of women and their children in Aboriginal communities, and make offenders accountable. There are also crucial discussions to be had with Aboriginal people, especially Elders and respected leaders (women and men), on how they see Aboriginal Law and Culture interfacing with the mainstream legal, policing and welfare systems, and whether 'hybrid' justice practices, that combine elements of settler and Aboriginal Law, are desirable and workable in this context (Blagg and Anthony, 2019). Such discussions require a decolonising imagination that acknowledges the tendency for epistemic violence in the ways mainstream research approaches engagement with Aboriginal people (Cunneen and Tauri, 2016).

Aboriginal women and settler state violence

A fully rounded analysis of violence against Aboriginal women in Australia must factor in the extent to which they have been the victims of state violence since colonisation: controls over Aboriginal women's bodies was critical to the settler project of what Patrick Wolfe (2008) refers to as Indigenous extinguishment. Aboriginal women were particularly affected by policies designed to destroy Indigenous family life: Patrick Dodson describing them as "the consciously nominated targets of government in its pursuit to destabilise and dismantle Aboriginal society" (Dodson, 1991: 236). Carceral feminism erases Aboriginal women's experiences as colonised as well as gendered subjects.

Aboriginal women are the fastest growing group in Australia's prisons (Baldry and Cunneen, 2014). There have been a number of recent cases where systemic racism, and denigrating stereotyping of Aboriginal women as 'drunks and druggies', has resulted in custodial deaths. For example, the 'Ms Dhu' case in Western Australia, where a woman reporting violence from her partner to police was detained because of unpaid fines, as permitted under the Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA), and died four days later in her cell from septicaemia and pneumonia.[3] The police took her (grudgingly and unwillingly) to a local health precinct several times when she complained of intolerable pain, where medical staff colluded with the police's assessment that she was simply putting it on and going 'cold turkey' and did not provide an adequate assessment of her condition (Blue, 2017; Coroner's Court of Western Australia, 2016) The settler colonial justice system does not prioritise the needs of Aboriginal victims of violence. Ms Dhu had contact with 11 police officers during the time she was dying in custody, none of whom treated her with dignity and respect, or kept her safe from harm. Not surprisingly, Aboriginal women do not have confidence in the police, or view them as a service; nor do they see an expansion of police powers as a solution to family violence (Law Reform Commission of Western Australia, 2005).

Hitherto, a deficit-based approach has tended to dominate official narratives on family violence. Aboriginal Law and Culture have been accused of sanctioning family violence, while Aboriginal women have been portrayed in mainstream discourse as being the hopeless, helpless victims of Aboriginal men, rather than as resilient and forceful leaders in their communities. They have been portrayed as victims of Aboriginal Law and Culture, rather than as bearers of Law and Culture (Blagg, 2008). In the Northern Territory, legislation was amended in 2008 by the Australian Commonwealth Government (under Section 16AA of the *Crimes Act 1914* (Cth) (Crimes Act)) prohibiting sentencing courts from taking into account Aboriginal Law and Cultural factors when sentencing Aboriginal people, a prohibition that communities have found 'alienating and stigmatising' (Northern Territory Law Reform Committee, 2020, p. 2). This emerged against the backdrop of an 'intervention' by the Commonwealth government in 2007 which saw a massive increase in policing on remote Aboriginal communities and the abolition of self-governing councils. Observers viewed the intervention as a fresh round of colonisation, and an attempt to eradicate institutions of Aboriginal self-government, rather than a strategy for genuinely tackling family violence (Altman, 2008; Anthony and Blagg, 2013). The depth of government cynicism can be gauged by the fact that it ignored the recommendations of an inquiry established to investigate claims of widespread sexual abuse and violence on remote communities because it called for community-led solutions that empowered communities, as opposed to more police and top-down controls over communities (Wild and Anderson, 2007).

In opposition to the punitive turn in domestic and family violence policies, which support the increased use of incarceration and other punitive sanctions to tackle violence against women, Aboriginal peoples are increasingly advocating for strengths-based and community-led solutions that are culturally safe, involve Aboriginal justice models, and recognises the salience of Aboriginal Law and Culture (see e.g. Atkinson, 1990a, 1990b, 1990c, 2002; Hovane, 2015; Hovane and Cox, 2011; McGlade, 2012; SNAICC 2017;

The Healing Foundation et al., 2017). Western Australia Department for Child Protection and Family Support (2015) Kimberley Family Violence Regional Plan 2015–2020, argues that 'for family violence prevention and intervention to be relevant and effective, it must be grounded in Aboriginal law and culture' (2017. p. 11; see also Hovane, 2015; Hovane and Cox, 2011). The same report also claims an important role for Aboriginal Law as having a 'stable and enduring' regulatory function in community life (p. 11).

Decolonising research

Cunneen and Tauri (2016, p. 10) argue that much mainstream criminological research contains 'significant epistemological and methodological blind spots', due to the fact that it excludes, or, at the very least, minimises the centrality of colonisation in the creation of contemporary social conditions for Aboriginal people. Patrick Wolfe (2008) suggests that settler colonisation remains a process rather than an event and is held together by value systems that normalise and naturalise white hegemony: what Mignolo calls the 'colonial matrix of power' (Mignolo, 2011). Western social science methodologies have assisted in the maintenance of colonial belief systems by relegating Indigenous knowledge to the status of folklore, subjective rather than objective, irrational rather than scientific.

Research with Aboriginal peoples must remain alert to the dangers inherent in, self-styled, 'objective' research, which cloaks the imposition of western ways of thinking and being onto the Other. Working from Linda Tuhiwai Smith's (Ngāti Awa and Ngāti Pouro, Māori) (1999) approach to decolonising methodology, we privileged the experiences and aspirations of Aboriginal peoples. We dropped the notion of research 'subjects' and replaced it with 'collaborative partnerships' as an important first step in realigning relationships. Our approach was qualitative, based on fieldwork in the various sites across northern Australia, and embedded in ethnography, phenomenology and 'grounded research' (Denzin and Lincoln, 2011). A grounded research approach, as originally defined by Strauss and Corbin (1998), seeks to ground theory in observation and dialogue, based on a number of generative questions to guide, but not bind, the research. In relation to the interchange with Aboriginal people, we adopted a 'yarning' style as a way of sharing information which situates researchers as 'listeners and learners' (Leeson et al., 2016), rather than experts, and allows participants to control the pace and flow of dialogue (Bessarab and Ng'andu, 2010).

We inverted the traditional practice of research on Aboriginal people by giving priority to the work of Aboriginal scholars and organisations, and to the views of respected Elders and other community members wherever possible. We were able to draw upon a wide circle of Aboriginal researchers and community navigators through the University of Western Australia Law School's Centre for Indigenous Peoples and Community Justice, as well as relationships of trust built up by years of partnering with, and supporting, Aboriginal organisations.

On the basis of discussion with these entities we decided to focus on a number of communities in which: Aboriginal Law and Culture was the predominant force governing daily life; where English was a second, third, or even fourth language; where forms of

traditional 'initiation' were practiced; and, where ascription to traditional 'skin' systems governed marriage relationships.[4] The idea was, so to speak, to go back to the 'source' of Law and Culture. In these communities, Aboriginal people are bound by two sets of laws, Aboriginal Law and settler law, and, on occasion, obeying one will place a person in breach of the other (a common one in remote communities is when someone without a driver's license is obliged – under Aboriginal Law – to take a senior relative to town). In most instances Aboriginal people will follow the dictates of Aboriginal Law even where it may lead to prison (Law Reform Commission of Western Australia, 2005; Anthony and Blagg, 2013). This is not surprising given that status and belonging, family relationships and access to a fulfilling community life, hinge on Aboriginal cultural identity. On the other hand, being bound by white settler law can mean being subject to the repressive aspects of state power without being granted its protections and benefits (Blagg and Anthony, 2019).

It is important to add that this does not mean that Aboriginal groups in the more urbanised south of Australia do not practice a form of Law and Culture, particularly through adherence to reciprocal obligations to kin and family, and connection to particular country. However, many elements of Law and Culture were deliberately destroyed by settlers through dispossession and the removal of children, who were prevented from learning Law and Culture. We believe that Law and Culture on these locations deserves a study of its own, focussed more on identifying elements of culture which survived dispossession and how these traces are, or could, be deployed in developing local family violence reduction strategies.

All of the research sites were paid for their time and this allowed them to build capacity to participate in the research, provide translators, feed and transport community participants (such as Elders) and liaise with local agencies such as the police, women's refuges, child protection, correctional services, legal services, domestic and family violence workers, drug and alcohol services, mental health and medical staff, who were often invited to participate in parts of the process at the discretion of the community.

The fieldwork involved partnering with seven Aboriginal community organisations across northern Australia:

- Gawooleng Yawoodeng Aboriginal Corporation Women's Crisis Accommodation Centre, Kununurra, Western Australia;
- Kimberley Aboriginal Law and Cultural Centre (KALACC), Fitzroy Crossing, Western Australia;
- Mornington Island Justice Group, Mornington Island, Queensland;
- Catholic Care, Tiwi Islands, Northern Territory;
- Martu Kanyirninpa Jukurrpa (KJ), Newman, Western Australia;
- Darwin Aboriginal & Islander Women's Shelter, Darwin, Northern Territory; and
- Darwin Indigenous Men's Service, Darwin, Northern Territory.

The fieldwork took place between August–December 2019 and involved a mix of settings, including on-country camps, community facilities, and men's and women's places. A total of 161 men and women Elders and senior community leaders participated in the groups, with more women than men participating. In all sites, Aboriginal Law

remained a feature of daily life, particularly in relation to what one senior woman in Fitzroy Crossing referred to as the 'skinship' system, which references the complex, intricate web of mutually binding duties and obligations that tie people together within a particular community, based on skin and kinship relationships. In many Aboriginal communities, Law and Culture form the basis for maintenance of social order and harmonious relations, and ensuring cultural continuity. However, participants across the research sites agreed that Aboriginal communities struggle to maintain Law and Culture and that settler law and forms of governance constantly undermine the authority of Elders. There was a shared belief that Culture is the core of Aboriginal society—as one senior woman in Fitzroy Crossing said, 'we live and breathe in a cultural world. Culture is our oxygen'.

The limits of the western theory

Our research strongly indicates that Aboriginal people hold a radically different set of understanding regarding the scope and causes of family violence, and how the issue should be tackled. The dominant feminist narrative of family violence situates violence against women in ideological and structural gender inequality and patriarchy, within Eurocentric familial structures (Aboriginal and Torres Strait Islander Women's Task Force on Violence, 2000; Nancarrow, 2006; Wall, 2014; Yodanis, 2004). Significantly, this narrative influenced the development of legal and policy frameworks in response to family violence: gender inequality underpins the prevailing legal conceptions of domestic violence, as articulated at the international level (see e.g. McQuigg, 2011; UN Declaration on the Elimination of Violence against Women 1993) and in domestic laws (Nancarrow, 2016).

There is growing recognition, however, of the limitations of the 'gendered aspirations of domestic violence laws' for Aboriginal peoples (Nancarrow, 2016). A number of Aboriginal women disputed whether gender inequality was a driver of violence in Aboriginal communities, arguing that this is a Eurocentric construct that describes relationships in western capitalist societies where the emergence of distinctively public and private worlds (with women consigned to the latter) created the basis for women's oppression (Atkinson, 1996; Behrendt, 2002; Kelly, 2002; Langton, 2018). Similarly, patriarchy is a western notion that identifies the dominance of men, and male power, in keeping women in a state of subordination. Domestic violence is one way in which men maintain patriarchal dominance.

It is not our intention to dismiss the relevance of this feminist paradigm; rather we assert that the approach can result in the erasure of the colonial experience and, moreover, enhances the power of the very repressive instruments of the settler state that have acted as tools of Indigenous dispossession. As the Ms Dhu case, discussed above, and a number of other recent instances where Aboriginal women have died in custody, testify, denigrative stereotyping of Aboriginal women continues to undergird official responses when Aboriginal women seek assistance. Hovane (2015) argues that non-Aboriginal observers fail to take into account the legacy of colonial violence when advocating for more responsive policing as the solution to violence, which obscures the 'historical and ongoing mistrust of the police, courts and justice systems, and the perceived inability of these systems

to provide responses that meet the specific needs of Aboriginal and Torres Strait Islander peoples' (Hovane, 2015, p. 16).

Our research tends to support an 'intersectional' analysis that positions violence at the junction of multiple forms of oppression (Blagg et al., 2018), and acknowledges the complexity and 'multitude of inter-related factors' attributable to family violence (Cripps and McGlade, 2008, p. 242; McGlade, 2012; Memmott, 2010). Aboriginal peoples have long agitated for the 'opportunity to develop their own solutions to family violence and sexual abuse' (Law Reform Commission of Western Australia, 2006, p. 29 fn. 112, see e.g. Atkinson, 1990a, 1990b, 1990c, 2002; Hovane, 2015; Hovane and Cox, 2011; McGlade, 2012). They have also championed responses to family violence that involve Aboriginal justice models and the recognition of Aboriginal Law and Culture (Australian Law Reform Commission & New South Wales Law Reform Commission, 2010; Behrendt, 2002; Hovane, 2015; Kelly, 2002).

Law and culture and family violence

There was an almost universal belief across the research sites, in both men and women's meetings, that Law and Culture provide the pathway to reducing violence. The key message was that those in mainstream systems need to talk to, listen to, and work with, senior members of Aboriginal communities. The mainstream legal system and forms of governance have deliberately undermined the practice of Aboriginal Law and Culture, which in turn prevents communities from regulating social behaviour. Participants expressed a shared belief that Law and Culture are the bedrock of Aboriginal social life. Participants from across all research sites agreed that Aboriginal communities struggle to maintain Law and Culture in the face of constant pressure to conform to mainstream beliefs and ways of being, and that mainstream law undermines the authority of Elders. An Elder from Fitzroy Crossing stated, 'It's not that Culture is dying on its own, *cardiya* [white] law is killing it.'

In relation to family violence, the mainstream legal system discourages or punishes Elders for enforcing Law. For example, in a remote community in the Northern Territory an Elder punished a young male following a family violence incident, and was charged by the police and sent to jail (Kununarra women's meeting). Participants stressed that violence against women and children is not an acceptable part of Aboriginal Law and Culture. Participants across the sites argued that it has been attempts to discourage the practice of Law and Culture, the inability to carry out cultural obligations, and interruptions in passing values and expectations down to younger generations, which causes social dysfunction and violence. Health and wellbeing are also compromised when cultural obligations are not fulfilled.

Communities have been disempowered through de-funding of community-controlled services and programs. There was a consistent belief across all of the sites that Aboriginal organisations have been steadily asset stripped of resources, which have been reinvested in a mix of religious or affiliated organisations. Now, rather than directly funding Aboriginal bodies to provide services, such as youth diversionary programs, funding is channelled through mainstream non-government organisations. Some of these organisations have no roots in communities and little knowledge of Aboriginal Law and Culture.

Community members in Darwin and Fitzroy Crossing noted that the programs run by such organisations are not 'culturally safe' and are undermining attempts by communities to discipline and control their children and young people.

Elders and other senior members of communities maintained that responsibility for family violence reduction strategies should be place-based and part of local community safety plans. A key role of these plans would be the creation of community owned and managed diversionary programs, particularly for younger people. There was unanimity across research sites that governments need to increase funding for programs aimed at diverting people away from the criminal justice system, as well as involve communities in designing and delivering the programs. At the very least there needed to be a 'co-design' process where mainstream agencies work collaboratively with community organisation and Elders to build initiatives congruent with Aboriginal Law and Culture. A defining feature of congruent programs is the location of programs 'on-country' under the leadership of Elders. As noted earlier, connection to country is at the heart of Aboriginal notions of being and belonging.

Women Elders play a particularly important role in ensuring the safety of women and children on an 'informal' basis (Kelly, 2002, p. 211). There are numerous Aboriginal women who open their homes to women escaping violence and act as an informal refuge, some continuing this service even where there is a government funded women's refuge. Some women will not access them for a diversity of reasons, for example, they may have drunk alcohol or have older children with them and/or have infringed rules on previous visits. Refuges run by non-Aboriginal organisations are not always considered to be 'culturally safe', meaning that they do not offer an environment which is spiritually, socially and emotionally secure as well as physically secure.

Women Elders will also be involved in mediating between couples. One Aboriginal women's advocate said:

> For Elders to facilitate or sit-in on the session with the family and help them discuss what's causing the problem, and provide support for women and children, this is far better than the current system. But women's and children's safety must always be a priority. The presence of women Elders is very important to ensure the safety of women and children (Kelly, 2002, p. 211).

This kind of leadership is referred to as 'Grandmother's law' in many Aboriginal communities, and it has a vital role in securing the safety of women and children, as acknowledged in a number of reports (Aboriginal and Torres Strait Islander Women's Taskforce on Violence, 2000). According to Tanganekald, Meintangk Boandik woman Irene Watson, Grandmother's law demonstrates the strength and centrality of the Aboriginal women's Law and Culture, and their role in empowerment and community safety (Watson, 2007).

The groups consulted referred to a number of programs operating in their areas that assist with diverting men, women or young people away from the criminal legal system and back onto country to undertake cultural activities. Towns, where alcohol is freely available and there are fewer social controls, are considered to be anomic places, where people are able to shed restraints and engage in damaging behaviour.

Martu Elders said that 'town is bad, country is good', the Martu word for alcohol is 'wama' which translates as poison. Their solution to family violence lies in taking families out on-country to work on men and women's 'Ranger' programs that reconnect people with the land: 'getting men and women and families living together, being together, working together, on-country is the solution to family violence'. Participants want to see violence reduction programs integrated into a community health and well-being space, rather than just a criminal justice space. Additionally, when someone – using and/or experiencing violence – does come into contact with the legal system, health-related issues should be immediately assessed for trauma, disability, including foetal alcohol spectrum disorders (FASD); addictions; and mental illness (as we discuss later in more depth).

Participants argued that Aboriginal people need to lead partnerships with the mainstream legal system and services and not just be co-opted when it suited the interests of white people. There was a consistent view that Elders need to work in partnership with (but not in subordination to) police and courts, and be involved in decision-making. In Fitzroy Crossing, the women Elders noted, 'we always have to fit into *cardiya* ways. We want to be driver of the vehicle. Our values, rules, all of that.' Similar views were expressed by a woman Elder on Tiwi Island, who said:

> When someone does something wrong in the community the *balanda* (white) policeman would take that person away, and they told us we weren't allowed to get involved … we don't know what they are saying or doing with that person … they go to jail … we don't see them … we want to be involved … we want to know what is happening with people …

On the other hand, Tiwi Elders have led in the creation of a new diversionary program called *Ponki* which is respected by the community and by the police and courts. The 'skin' system remains very strong on Tiwi – people know which skin group they belong to, and generally conform to the rules governing relationships (see above). People rarely marry 'wrong way', meaning from the wrong skin group ('they would need to go over to Darwin if they did, as they would be banished') and Aboriginal languages are spoken. Depending on the seriousness of the offence (offences involving death or serious assaults are excluded), the police will contact the *Ponki* Elders group and authority figures from the correct skin group will work with the police to identify a diversionary alternative to court. There may be a family gathering that includes an array of people from relevant skin groups who may 'growl' (publicly admonish) offenders but also there are also options such as drug and alcohol counselling, and/or time in a bush camp. Elders on Tiwi wanted to see greater recognition of the *Ponki* system by the mainstream legal system, including having their Elders in court, sitting with magistrates, a practice which is increasingly commonplace in other Australian jurisdiction, such as Victoria where a system of *Koori (*Aboriginal) courts has been in existence since the early 2000's.

In all research sites there was a uniform belief that Aboriginal dispute resolution processes, such as *Ponki* should be employed first, and mainstream systems second, for most offences committed on the community. Extremely serious offences, such as killings, would be the responsibility of the mainstream justice system. Most communities did

not feel they had the capacity to deal with these matters within the framework of Aboriginal Law, as they would require the use of physical punishments, such as a spearing, that they no longer feel are appropriate, or which might lead to imprisonment under mainstream law.

The exception being the desert *Martu* groups who still used physical punishments such as spearing, hitting with sticks etc., and will carry out these punishments irrespective of the actions of the mainstream justice system. Here, offenders will often request that they be bailed to their community so Aboriginal Law can take its course before going to prison, otherwise the community will wait until their sentences have been completed and then take action, meanwhile the offender's family might be subject to sanctions in lieu of the offender. From a mainstream perspective, such practices seem abhorrent and cruel. In reply, Aboriginal people argue that punishment restores relationships and once punishment is completed the matters are resolved and people get on with their lives. Also, they view the system of incarceration, far from country, family and countrymen; where they are unable to care for their families, be involved in ceremonies, and look after country, as cruel and wasteful.

The majority of participants favoured the use of community endorsed sanctions run by Aboriginal Elders. These included:

- 'growling' offenders and community admonishment;
- holding skin group meetings to censure violent people, but also identifying the factors driving violence;
- temporary banishment from community;
- being taken to a remote outstation or island for a time (under the authority of Elders), sometimes taking partners and even other family members;
- ostracism from some community facilities (e.g. not being allowed to buy goods at the store or use the pub), often described as being 'banned from the camp fire'; temporary or permanent separation of parties; and
- making sure offenders attend counselling for alcohol and drug use and anger management group and/or men's group.

Elders were generally unimpressed by the way the western legal system 'encourages' people to deny guilt. There was a widespread view that Aboriginal Law and Culture was better because the white system rewards lying. Under Aboriginal Law and Culture, they said, people are brought up not to lie and to admit guilt if they have done harm, even in court. They would say something to the effect that 'so and so went into the court and pleaded not guilty, we all knew he was, and he knew we knew'. In small Aboriginal communities it is difficult to keep things 'behind closed doors'. Aboriginal people view community conflict resolution processes as 'truth telling' opportunities, where wrongdoers would stand up and accept responsibility rather than hide behind white law.

Healing

The healing of inter-generational trauma was fundamental to addressing family violence in the opinion of most research participants. Participants in Fitzroy Crossing spoke about

the centrality of trauma in family violence. They noted that 'the trauma, it's affecting the younger ones … we need culture and healing rehabilitation for children'. They told us that to break the cycle of intergenerational trauma, healing should be integrated into work at all levels of intervention, from preventative work in schools through to work with offenders and victims/survivors. There was a common view among participants that governments should support more work around healing or counselling before people get into trouble. Elders emphasised the need for preventative programs directed at young people that teach them about how to be strong in Culture, and about understanding their roles, responsibilities and place within their families and communities. Elders told us that *cardiya* (white) people do not recognise the link between emotional health and wellbeing and Culture; for example, ignoring the important link between fulfilling obligations to look after country and personal health. An Elder in Kununurra said, 'If country is not looked after, people get sick.'

Communities wanted government to support the development of infrastructure on Aboriginal 'homelands' and 'outstations',[5] to serve as rehabilitation centres and 'half way' houses, where countrymen coming out of prison could be reintegrated, without the temptations of town undermining attempts to go straight. As we have suggested, physical punishment is a declining practice, instead there is more of a community focus on healing. Participants recommended healing camps and space where people could receive proper mental health support. The Darwin men's group said: 'Bush camp is best option, learn about bush medicine, go through Law (initiation), learn about skin groups'.

And,

> (We should) take families on-country away from all the shit (Darwin). This will help build respect for Law and Culture. Darwin Aboriginal Men's Shed does great work with men, takes them fishing and camping, then yarning together. This is the best way for men.

Similarly, women Elders in Fitzroy Crossing spoke about the strategies they are using to strengthen Law and Culture in relation to the needs of young women through on-country camps: using *Bunuba* and *Ngarinyin* (two of the five language groups in the Fitzroy Valley) Culture camps, to do intergenerational teaching:

> There's no agenda, just gathering together to do healing. We need to do healing first before we can go forward. Younger women had a say. Older women had cultural input. Language, knowledge, Culture is going to be passed down. We worked out a cultural model … We setting up women's groups. Out on-country is our classroom, our pharmacy, our IGA (supermarket), our healing, our wellbeing.

As far as these women were concerned, intergenerational trauma required intergenerational solutions and should involve whole families 'healing' together. The western practice of individualised therapies, while not discounted altogether, was not considered to be appropriate because it ignored the extent to which trauma circulated around the whole family group and across generations.

Addressing the 'Four G's'

There was also a widespread belief that current family violence policies downplay the significance of inherited traumas, jealousy and 'jealousing', alcohol and other addictions on people's behaviour. On the Tiwi Islands they spoke of the 'Four G's' of 'grog, gunja, gambling and gossiping' as being the major cause of fights and conflicts in families. As one respected woman in the community told us:

> There are a lot of issues that the community have to deal with on a daily basis so we decided to come together to [talk] about them … after a lot of talking the community identified the four major issues causing problems with family fighting or conflicts … we decided to refer to them as the four G's … grog, gunja, gambling and gossiping … all of these things affect both men and women on Tiwi … they are not part of our Tiwi Culture … they are very destructive … if we deal with these things then the community can restore Culture back to what it was …

According to the majority of Elders, alcohol has been the principal factor in the destruction of Law and Culture and family violence. A Fitzroy Crossing Elder said that 'alcohol has no country' and 'alcohol has no Culture'. There were some differences of opinion regarding blanket bans on alcohol, however. Strictly enforced restrictions on the sale of alcohol were generally welcomed, but total bans were seen as counter-productive, creating a flourishing black market where even more family resources are consumed by alcohol. On Mornington Island, the Elders Group had opposed the introduction of an Alcohol Management Plan that banned alcohol on the Island; saying that alcohol had been available on the Island since the 1970s when a pub was opened, and now, in their estimate, well over half the population had an alcohol addiction. The ban led to an explosion in 'home brew' making (hand sanitizer, sugar, cordial, vegemite) which health workers on the Island reported as being more damaging to health and mental health than anything available in the pub. There was widespread belief across sites that family violence strategies in Aboriginal communities needed to include controls over access to alcohol, but this needed to be negotiated with Aboriginal leaders.

Men and women

There were some critical differences of emphasis between Aboriginal communities and mainstream systems regarding the position of men in violence reduction initiatives. Men and women in the study highlighted the positive role Aboriginal men have to play in the prevention of family violence. The disempowerment of men, and the ways men's traditional roles as warriors and hunters have been undermined by colonisation, is considered a major factor in turning to alcohol and crime: observations confirmed in recent research by the Healing Foundation with Adams et al. (2017). Aboriginal women stressed to us that men felt powerless to change their situation: there was a pervasive sense of being humiliated and stereotyped as abusers and criminals. This led to insecurity and attempts to control partners through violence and intimidation. However, in contrast to the male power and coercive and control model, this violence is not a strategic move, rather it is

impulsive, lashing out, enraged. Women also stressed that women's jealousy was also a contributory factor in creating family conflict. Insecurity, feelings of inadequacy, low self-esteem and traumatic 'triggering' were viewed as consistent features of family life for men and women, overlayed by the effects of racism which left Aboriginal people 'feeling like trash'. In every research site we heard Aboriginal women say, 'we need something for our men. There is nowhere for them to go for help'. They also stressed that men needed 'to have a seat at the table' when family violence strategies were being discussed, and that this was a key element of Aboriginal Law and Culture that both genders are involved in decision making. As one woman in Fitzroy Crossing said: 'it is our communities (as a whole) that need to be empowered, not just women, men too'. It is noteworthy, in this context that two of the longest running and successful men's programs, the Men's Outreach Service in Broome (west Kimberley region of Western Australia) and Darwin Indigenous Men's Service (Darwin Northern Territory) were both initiatives of Aboriginal women's refuges – The Marnja Jarndu Womens Refuge in Broome and Darwin Aboriginal & Islander Women's Shelter – who wanted to see more done to help men.

Aboriginal participants expressed a belief that government policies on family violence seem designed to 'break up' Aboriginal families, rather than strengthen them, and are not tailored to address the types of conflict experienced in Aboriginal communities. It was suggested that Aboriginal community organisations need funding to provide ongoing support to women who choose to recover and rebuild their relationships, and encourage men to seek help. For many Aboriginal women, leaving 'country' and family permanently is not an option, or cannot occur without considerable long-term support. Women told us they, in most instances, want the violence to stop, but not for men to go to gaol.

The research also revealed how mainstream beliefs about family life have tended, even if unintentionally, to undermine social controls in Aboriginal communities. In Aboriginal Law and Culture, child-rearing practices and patterns of family obligation are the responsibility of a range of members, and it is not unusual for people to be raised by grandparents, aunts and uncles. These family members are critical to the socialisation process and have a specific responsibility to condemn and intervene in violence, including punishing wrongdoers. Uncles, brothers, cousins had an obligation to protect women from violence, and would step in to warn or physically punish violent men. They said that they now fear doing so because of concerns they would be punished by the mainstream legal system.

An Elder in Darwin also stressed the importance of an inclusive definition of families:

> The white system does not recognise the rights of other kin to intervene, it's just between man and wife and the state—children are their property—but in our Culture child rearing is carried out by uncles, aunties, grandmothers. They are not always consulted by government agencies.

Both parties need support for trauma and addiction. There was a strong message that there was no point in getting one partner to recovery when the other still carries trauma and addiction. For example, a woman Elder in Darwin said:

> Sometimes both partners can have problems with grog or alcohol addictions … or if they are stressed out because of things that happen to them … they start fighting … one person might go to rehab and the other one is still drinking or taking drugs … this can cause problems if them come back together … the one who is still drinking or taking drugs or whatever … they might put pressure on the other one to go back to the grog or drugs … this is not good … they need to both go to rehab or counselling … or whatever.

Women's meetings stressed that women need to deal with their issues too because they have problems also around alcohol, drugs, 'jealousing' or gambling, and they need to deal with these things before they get out of control. Jealousy and 'jealousing' emerged constantly as key drivers of family violence. 'Jealousing' is difficult to translate and has multiple meanings; including behaviours or actions that test the commitment and seriousness of relationships by deliberately setting out to make a partner jealous, for example by flirting with or looking at others, and conflicts over partners. Jealousing can involve other family members who will deliberately undermine a relationship by stirring up feelings of resentment and insecurity. The spread of social media platforms into Aboriginal communities is believed to be increasing the number of jealous fights in communities, particularly by younger women.

Moving forward

Aboriginal Law and Culture and Aboriginal organisations should be at the forefront of addressing family violence in Aboriginal and Torres Strait Islander communities: 'Elders know their Culture, country, and community'. Government can provide support by resourcing the creation of a range of place-based, on-country options designed to strengthen Law and Culture. The communities consulted expressed a desire for practitioners and policymakers to acknowledge the link between violence and issues stemming from colonisation, such as alcohol, intergenerational trauma, cognitive disabilities and jealousy, rather than focusing on gender inequality, patriarchy and male power. They wanted a greater focus on prevention work (such as family healing, trauma counselling, and alcohol or drug rehabilitation) with Elders' knowledge at the centre of the process. Financial and infrastructural support for on-country healing run by communities, rather than non-Indigenous non-government organisations, was a consistent theme in the discussions, and a greater understanding of Aboriginal Law and Culture as a positive force for change, rather than a primitive hang over from pre-modernity.

Communities want to see a greater focus on diversion from the mainstream legal system into community owned and place-based structures and greater involvement of Elders in the criminal legal system, sitting with magistrates and judges in courts, co-designing programs that blend western and Aboriginal forms of therapies. These already exist in some states, such as Queensland, Victoria and New South Wales, but are less prominent in the north of Australia. There are 'decolonising' practices in embryo across Australia, from local community justice groups, specialist Aboriginal family violence courts, Aboriginal self-policing initiatives ('Night Patrols') run mainly by Aboriginal women which head off family fights, and Aboriginal led on-country alternatives to custody (Blagg and Anthony, 2019). Insecurity of funding and lack of

commitment by government were viewed as the main stumbling blocks to the spread of these initiatives in our research.

Meaningful decolonisation would require sustained dialogue between Elders, government, police and judicial officers regarding the role of traditional justice mechanisms in offering an alternative to enmeshment in the prison system. Participants were clear and consistent that there needed to be a place for both men and women in the design and implementation of local family violence strategies, as well as a focus on policies that keep families together, rather than break them up, which is often the outcome, if not always the intention, of mainstream approaches. Finally, communities suggested that mainstream systems do more to gain an understanding of the nature of Aboriginal family obligations, particularly of skin systems, as well as increased collaboration led by Elders to respond to family violence in ways that work with those obligations and ties.

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3. The state government of Western Australia has committed to repealing the Fines Enforcement Act and withdrawing the power to use detention to write down fines.
4. 'Skin groups' are a subset of Aboriginal society, passed down by a person's parents to their children. Belonging to a specific skin group will determine who a person can marry within the community.
5. Small communities 'of mostly Aboriginal people, usually less than 100, in permanent or semi-permanent residence with a water supply and permanent accommodation" (Centre for Appropriate Technology Limited, 2016, p. 10).

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