THE RELEVANCE OF DISCOURSE ANALYSIS TO LEGAL PRACTICE

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This paper begins by describing a recent model for discourse analysis which brings together much of the recent work in various fields - linguistics, literary theory, philosophical theories - which has been influencing changes of direction in discourse analysis over the last twenty odd years.

The model derives from the work of British scholars, especially those at the University of Lancaster, and is most explicity described in a book by Norman Fairclough.[1]

Language and Discourse

Fairclough glosses *discourse* as "Language as social practice, determined by social structures". Now discourse also has effects on social structures, so it is equally true to say "discourse is language as social practice, determining social structures".[2] Recent scholarly writing often refers, if opaquely, to this verbal paradox, usually identifiable by the active and passive forms of the same verb.[3] This issue of language "determined by and determining" social structures will wind in and out of several examples in the following discussion.

1 N. FAIRCLOUGH, LANGUAGE AND POWER (Longmans 1989).

2 *See* especially Chapter 2.

3 For example: 'The central concept is still the dialectic of realization, whereby the consistent

Fairclough's definition has several implications. First, language is a part of society, which implies that linguistic phenomena are social, and equally, that social phenomena are linguistic. Linguistic phenomena are social in that "whenever people speak or listen or write or read, they do so in ways which are determined socially and have social effects".[4] It is clear that the professional education of lawyers is designed to position those students in their social practice, including their discourse, as lawyers and that the social effects of that practice is to implement *the law* in one way rather than another.

The use of specifically legal language, marked in its lexical choice, reinforces the institutional separateness of legal practice from general social practice, a discourse of mystery safely interpreted only by those trained in the interpretative traditions of the law.

Sometimes the obfuscating tendency of legal discourse can be viewed as just a formal problem - rewrite the legal texts in more general lexical choices and simplified syntax and great! we are all communicating on an even level. While such a project is certainly worth undertaking (and the 'Plain English' project conducted by Associate Professor Eagleson in the English Department at the University of Sydney is one such case[5]) such an approach can divert one's attention from more significant areas, that is the ideology from which point of view the law has been constructed and is being interpreted. Because a law is easier to obey, being comprehensible, it is not necessarily more worthy of being obeyed.

The second aspect of *language is a part of society* was that *social phenomena are linguistic*. Fairclough's example is that disputes over the meaning of political terms are not external to politics, *they are politics*. In relation to the law, consider this extract from *The Sydney Morning Herald* of Friday, 13 April, 1990, concerning a legal dispute centred on the word *custody*.

> The Royal Commission into Aboriginal Deaths in Custody will not investigate the shotgun death of Mr David Gundy, a Federal Court judge ruled yesterday. The police officers involved in the raid had applied for an injunction preventing Royal Commissioner Mr Hal Wootten QC, from investigating Mr Gundy's death, saying that the incident was outside the commission's terms of reference. Mr Wootten had previously rejected an application by the squad to stop the inquiry, saying it was within the commission's jurisdiction because Mr Gundy was in "custody" as police had surrounded his house before the raid.

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semantic orientations of texts and the social-activity structures which enact them are seen as both constitutive and productive of (i.e. realized by AND realizing) some higher-order social semiotic.' Thibault, *Knowing What You're Told by the Agony Aunts: Language Function, Gender Difference and the Structure of Knowledge and Belief in the Personal Columns*: in FUNCTIONS OF STYLE (D. Birch and M. O'Toole eds. Pinter 1988).

4 FAIRCLOUGH, *supra* note 1 at 23.

5 *See* Eagleson, *Gobbledegook: The Tyranny of Linguistic Conceits* in LANGUAGE TOPICS: ESSAYS IN HONOUR OF MICHAEL HALLIDAY, VOL II (R. Steele and T. Threadgold eds. John Benjamins 1987).

> Mr Justice Burchett said yesterday that Mr Gundy was not in custody just before he died. To suggest that a person was in custody if he was restrained from leaving his own house was a misuse of the word *custody*.
> "Such a proposition would embrace people in a house under seige, a bank robber in a bank which is surrounded by police, or hijackers in an aeroplane encircled by security forces at an airport," he said.

It is interesting that in assigning a meaning to *custody*, the judge considers this lexical item in isolation, outside its context of use, with the hypothesized generic meaning *one who is surrounded, rather than merely held, by police*. Such a class of situations then includes those specific suggestions made by the judge. But if the meaning of the lexical item *custody* were considered in its textual context of The Royal Commission into Aboriginal Deaths in Custody, then the judge's examples would have to be of aboriginal people under seige, aboriginal bank robbers, aboriginal hijackers - an unlikely list.

Viewed in context the terms of the Commission could more readily be constructed as primarily to do with aboriginal deaths in a situation of police control, an interpretation which does not set a dangerously open-ended precedent for the meaning of *custody*, as applying to the general community.

It is not suggested one interpretation is true and the other false, though each can be viewed as valid in the context of a particular set of beliefs and purposes.

Halliday suggests:

> Semantics has nothing to do with truth. The relevant concept (in establishing the validity of a proposition in a dialogue sequence) is that of exchangeability, setting something up so that it can be caught, returned, smashed, lobbed back etc.[6]

The implications of this position for legal practice is significant: if the resolution of legal disputes is not through appeal to any absolute code of meaning, but to whatever socially determined practices of interpretation the legal practitioner brings to the dispute then the law is determined by varying social determinations of its interpreters. This is an exemplification of Fairclough's second major implication from his definition of discourse: that language is a process, and that process is socially conditioned.

Discourse and Text

What is the difference between *discourse* and *text*? For Fairclough the text can be viewed as a product, the product of the process of text production or it can be viewed as a resource, the resource for the process of text interpreta-

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6 M. HALLIDAY, AN INTRODUCTION TO FUNCTIONAL GRAMMAR (Edward Arnold 1985). This is a very detailed textbook. Useful as a more general and introductory account is work by Halliday in Part A of M.A.K. HALLIDAY AND R. HASAN, LANGUAGE AND TEXT: ASPECTS OF LANGUAGE IN A SOCIAL-SEMIOTIC PERSPECTIVE (Deakin U.P. 1985).

tion. In either case the text can be spoken of as an object and indeed can be physically recorded as an object: book, film, photograph, tape recording of conversation, shopping list, summons, transcript of a trial.

Discourse refers to the process of social interaction of which a text is just a part. Discourse includes the study of the processes of production and interpretation. Only when these processes are included can one study meaning, for meaning is not in the forms of a text, but in the particular writing and speaking, or reading of or listening to a text. These productive and interpretative processes involve an interplay, or interaction, between the formal properties of texts (word choice, and grammatical and phonological structure) and what Fairclough calls *members' resources.*

Information on members' resources has been developed particularly in the field of artificial intelligence, for computers. Comprehension is active in nature and according to Fairclough:

> [Y]ou do not simply decode an utterance, you arrive at an interpretation through an active process of matching features of the utterance at various levels with representations you have stored in your long term memory. These representations are prototypes for a very diverse collection of things - the shape of words, the grammatical forms of sentences, the typical structure of a narrative, the properties of types of object and person, the expected sequence of events in a particular situation type, and so forth. Some of these are linguistic, and some...are not.

And further:

> The members' resources which people draw upon to produce and interpret texts are cognitive in the sense that they are in people's heads, but they are social in the sense that...they have social origins...they are socially transmitted and...they are, in most societies, unequally distributed. People internalize what is socially produced and made available to them, and use this internalized members' resources to engage in their social practice, including discourse...Moreover it is not just the nature of these cognitive resources that is socially determined, but also the conditions of their use...These social conditions relate to three different levels of organization - the level of the social situation or the immediate social environment in which the discourse occurs, the level of the social institution which constitutes a wider matrix for the discourse and the level of the society as a whole.[7]

Consider as a relevant example a discussion by Stanley Fish, which is summarised here, of a decision of Chief Justice Parker of the Massachusetts Supreme Court who "finding himself faced with a defendant whose actions he abhors, nevertheless rules for him because the law he has sworn faithfully to execute bids him do so." Another commentator, Kenney Hegland, has taken this as an example of the operation of independent constraints on "personal predilections". Fish points out what repelled the judge (the man having broken a promise to someone who cared for his dying son) was equally "a sentiment that forms part of a

7 FAIRCLOUGH, *supra* note 1 at 10-11.

conventionally established system of obligation which Parker has internalized just as he has internalized the legal doctrine that now trumps his conventional sentiment."

Fish concludes that there "is no such thing as a mere (ie personal) preference"; any preference will derive from a norm of the community, and here the judge resolved this conflict of normative obligations by choosing the one he considered central to the role he was playing, ie his legal role.[8]

In summary, a definition of *discourse as language as social practice* means that discourse analysis will involve analysis of social conditions, analysis of processes of production and interpretation, and analysis of texts. As language is one of the various social practices, social conditions can include other texts, ie there is not a theorizing of text versus context, as language outside society or *expressing* society.

The analysis of the formal properties of texts is traditional linguistic analysis. However a linguistics which views *language as system* as its object of study is not particularly useful. Such an object of study, from the Swiss Ferdinand de Saussure's *la langue* in the late nineteenth century to the American Noam Chomsky's 'competence' in Transformational Grammar from the nineteen sixties on, does not enable you to analyse formal linguistic choices in relation to any context.

What is useful for the linguistic description of the text in discourse analysis is a contextual theory of grammar, like the systemic functional grammar of M.A.K. Halliday. The understanding of semantics is situational, that is meaning is understood as the relationship between form and situation, a word fairly equivalent with Fairclough's immediate social conditions. The highest unit of study in such a grammar is the text and the essential unit of meaning is the clause, so that individual words need to be interpreted at least in the context of their clause.

For a functional grammar, the lexical code, as recorded in the dictionary, is merely the record of the contexts in which a word has been interpreted, and the grammatical code, as in the learner's manual of English, represents the previous habits of use. Both are predictive of likely use, suggesting the potential of use but they are not hard and fast rules for use. Halliday's functional theory sees system or code as essentially determined by function, the language evolving to serve the purposes to which it is put.[9] This is the reverse of the *language as system* approach, in which the function or use is seen as determined by the rules of the code.

Perhaps this account has already suggested that legal discourse may be in a difficult situation. It is subject to all the same generalizations about discourse as described in Fairclough's model, with all the contextual contingency of meaning that implies, and the description of its texts will be better accommodated by a contextual and functional theory of grammar.

8 S. FISH, DOING WHAT COMES NATURALLY: CHANGE, RHETORIC, AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES (Duke U.P. 1989) at 10-13.

9 'The system is determined by the process.' *See* Halliday, *Language as Code and Language as Behaviour: A Systemic-Functional Interpretation of the Nature and Ontogenesis of Dialogue* in THE SEMIOTICS OF CULTURE AND LANGUAGE - VOL. I: LANGUAGE AS SOCIAL SEMIOTIC (R.P. Fawcett, M.A.K. Halliday, S.M. Lamb and A. Makkai eds. Pinter 1985).

Yet the very word *law* could be glossed as code; the traditional study of the language-system is much closer to the traditional use of the legal system, with the individual case examined to see what, if any, general law or rule it is an instance of. In certain practices British law has only appeared to function as the implementation of a system. This is because of the emphasis on interactive, if highly formalized, speech in the legal process, once civil disputes or criminal proceedings reach a certain stage. The members' resources of the judge, counsel, members of the jury and so on are all brought to bear in producing and interpreting the text (in the process of its production).

The final text could be represented in a written transcript, and can be studied in turn in later cases to decide whether it can be interpreted as a relevant precedent (according to the member's resources of the person studying the case). To do this we must be concerned with what Fairclough calls *explanation*, the study of the relationship between interpretation/production and social context.

Certain Categories: Discourse, Genre, Narration & Ideology

The area mentioned in the last paragraph has been the subject of some interesting work by Australian scholars working in semiotics, the study of signifying practices in a particular culture. Some perfunctory comments need to be made here about categories used in this work.

1. Discourse

This is compatible with Fairclough's use of the word, but linked primarily to his immediate level of social conditions, that is the level of the social institution.

In the words of Gunther Kress, "discourses are systematically organized sets of statements which give expression to the meanings and values of institutions" and "[t]he individual's history is composed of the experience of a range of discourse, passing through the intimate relations of the family and its discourses of authority, gender, morality, religion, politics; into school and its discourses of knowledge, science, authority, aesthetics; to work and adulthood."[10]

The discourse of the institution of the law is a discourse of adulthood, yet it is clear that discourses already experienced by the individual will influence that individual's positioning in the adult discourse. To the extent that individuals share

10 G. KRESS, LINGUISTIC PROCESSES IN SOCIOCULTURAL PRACTICE 11 (Deakin U.P. 1985). *See also* Aers and Kress, *The Politics of Style Discourses of Law and Authority in Measure for Measure*, 16 Style 22 (1982) (which argues that 'three major conceptions of law are at issue in Measure for Measure', each associated with a particular discourse). This use of the word *discourse* derives principally from the theoretical work of Michel Foucault. His earlier full discussion appears in THE ARCHAEOLOGY OF KNOWLEDGE, first published in France in 1969 and available in English trans. A.M. Sheridan-Smith (Tavistock 1985). Useful introductions/discussions of his work are THE FOUCAULT READER (P. Rainbow ed. Penguin 1984) and H.L. DREYFUS AND P. RAINBOW, MICHEL FOUCAULT - BEYOND STRUCTURALISM AND HERMENEUTICS (Harvester 1982).

similar discursive histories, their positioning in the adult discourse will be similar. It has often been a criticism made by those outside the law, and no comment is made on the accuracy of the criticism, that those in the law come from too similar a background. To the extent that this is so, it would explain the belief that some maintain in the objectivity of the law; the similar discursive positioning of legal practitioners would be associated with similar practices of interpretation and production.

2. Genre

Again according to Kress "genres have specific forms and meanings, deriving from and encoding the functions, purposes and meanings of the conventionalized occasions of social interaction." As examples of genre Kress cites "interview, essay, conversation, sale, tutorial, sports commentary, seduction, office memo, novel, political speech, editorial, sermon, joke, instruction".[11]

Clearly the same genre can appear in the discourse of different institutions, such as the tutorial in medical or legal education. There may be some correlation between discourse type and genre; a discourse may typically be associated with some genres and not with others. Fairclough comments "conversation has no *on stage* role in legal proceedings, but it may have a significant *off stage* role in, for example, informal bargaining between prosecution and defence lawyers."[12] It is interesting in this comment that conversation is allowed between *equals*, whereas witnesses must engage in genres probably unfamiliar to them. In Jackson's view this ritualized trial by combat of counsel and witness is generically weighted in favour of counsel, given their familiarity with the genres of the court.[13]

3. Narration

A detailed study has been made by Threadgold of texts related to the incidents in 1900 involving Jimmy Governor, also known as Jimmy Blacksmith. These texts include contemporary newspaper reports over several months, when police were hunting Jimmy Governor and a companion, and the novels by Frank Clune (*Jimmy Governor*) and Thomas Keneally (*The Chant of Jimmy Blacksmith*). According to Threadgold:-

> I am positing here that discursive fields are constituted of intertextual systems of patterns of lexical cohesion, transitivity patterns, and sets of possible/thinkable activity sequences, and that certain fundamental semantic oppositions structure those patterns. If I am right in this, then...once actual events, participants and circumstances (and their role relationships and cohesive activity sequences) are spoken/written in these terms, as to a large extent they must be, since these are the meanings the culture allows/enables, then only certain plots,

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11 Kress, *supra* note 10 at 19. *See also* Kress and Threadgold, *Towards a Social Theory of Genre*, 21 SOUTHERN REVIEW 215.

12 FAIRCLOUGH, *supra* note 1 at 30.

13 B.S. JACKSON, LAW, FACT AND NARRATIVE COHERENCE 9 (Deborah Charles 1988).

> points of view, characters and settings, to use the terminology of a realist narrat-ology, are possible. That is, whatever actually happened when the Governors committed the murders in 1900, at any given time only certain socio-historically determined stories are possible as constructions of that reality.[14]

The texts can be interpreted as being constructed at the intersection (at least) of two discourses, race and gender: Jimmy Governor was half-Aboriginal, his wife was white. It is stating the obvious to add that these two discourses, and their associated genres and stories, have been a site of intense social struggle in this century.

Threadgold points out that the speaking subject, the producer of the text, can change the dominant systems of value which structure a discourse, through being constrained by his or her different experience of social conditions, that is inter-textuality. [15]

Thus black = negative can become black = positive. On the other hand, the stories, the narration, are much more difficult to dislodge and as Threadgold writes: "What seems much harder to shift...are the consistent patterns of meaning which constitute the meaning potential of discursive fields (white men speak, think, quote/project the ideas, sayings of black men and women; white men act, blacks and women are acted upon, and so on)".[16]

The study of narration in legal discourse has already been perceived by those working in the field as very significant, though the method of approach is theoretically quite different from the description given here. Jackson is concerned primarily with the legal genre of adjudication in court and describes the interaction there as essentially concerned with the construction of stories, so that it is not judgements on *truth* which determine the outcome but rather judgements by those responsible for returning a verdict on the greater plausibility of one particular story.[17]

The work by Threadgold implies that in a particular culture, some stories are either most unlikely to be told or, if told, will be regarded as inherently implausible. Jackson's description of the judgement of this plausibilty is in terms of the philosophical subject of *speech acts*, where listeners speculate on the speakers' intentions, an individualist choice.

On the other hand, the model of discourse analysis described here would describe judgement in terms of the members' resources, derived from their experience of social practice, their discursive positioning in terms of the processes of interpreta-

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14 Threadgold, *Stories of Race and Gender: An Unbounded Discourse* in the anthology FUNCTIONS OF STYLE (Pinter 1988).

15 The discussion of dialogism, in which text can never be interpreted as monologic, speaking with one voice, for it is always in debate for the reader with previously encountered instances of similar texts, derives from the work of Mikhail Bakhtin. A bibliography and critical introduction to Bakhtin's works can be found in K. CLARK AND M. HOLQUIST, MIKHAIL BAKHTIN (Harvard U.P. 1984).

16 Threadgold, *supra* note 14 at 199.

17 Constructed by Jackson in terms of the credibility of the individual witness. *See* Jackson, *supra* note 13 at 8.

tion, with all the potential, variety and discontinuity that implies - except of course if all involved in the judgement are from the legal profession and from a similar socio-cultural background!

4. Ideology

From the perspective of our ideology we bring assumptions and expectations about what is *common sense* in the world, and read texts as *coherent* by using our common sense to *read between the lines*. Ideology is the very mechanism of non-coercive power. Power can be exerted on us by constraint or we can consent to being subject to that power.

The operation of ideology is precisely so to naturalise the dominant/dominated relationship that it seems common-sense for the dominated to acquiesce to the *status quo*. A law-abiding citizen is not just one who doesn't break the law but one who is proud to keep it. Typically it is only in situations where different assumptions are used in interpretation, that ideology becomes a point at issue.

Since each *side* maintains their position is *only common sense*, all the rational argument in the world will not provide *proof* for one position or the other. This is quite likely to occur in a multi-cultural society like Australia, but in particular it is one of the things aboriginal spokespeople have been trying to get Australians of the numerically dominant group to consider.

Christie offers an introductory account of differences between the traditional Aboriginal world-view and that of the Northern European settlers and the linguistic differences associated with these cultural differences.[18] The work could be criticized in some places for speaking of *Aboriginal culture* in a homogenous way although it is assumed this occurs because the work is introductory.

Of particular interest is an article by Eades dealing with the Aboriginal people in south-east Queensland whose usual language is English but whose discursive practices are Aboriginal.[19] Eades discusses the different attitudes to information in the white and Aboriginal cultures, and the different linguistic procedures for finding out information, such as different attitudes to asking direct questions.

Eades suggests that in Aboriginal practice, if you want to know something, you don't ask direct questions as that is rude. The socially preferred practice is to make a series of factual statements which are possibly relevant to what you want to know. The listener can then remain silent, or acknowledge your proposition, or choose to add new information. You may not discover your answer, or the lengthy process by Northern European standards, may enable you to infer it.

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18 M.J. CHRISTIE, ABORIGINAL PERSPECTIVES ON EXPERIENCE AND LEARNING: THE ROLE OF LANGUAGE IN ABORIGINAL EDUCATION (Deakin U.P. 1985). *See also* K. BENTERRAK, S. MUECKE AND P. ROE, READING THE COUNTRY (Fremantle Arts Centre Press 1985).

19 Eades, *English as an Aboriginal Language* in CHRISTIE, *supra* note 18. The article is included as Appendix 1 but originally appeared in ABORIGINAL LANGUAGE ASSOCIATION (J. Bell ed. ALA 1982).

Fairclough describes the interview as one of the most widely spread genres, ie widely spread through various discourses, increasingly an instrument of control, in public and private institutions, in initial encounters with the police, the 'welfare', the job interview, the mortgage application, with counsel and so on.[20] The interview consists primarily of question and answer, with control of the turns firmly with the interviewer. A social agent, that is an individual, differently positioned in relation to the dominant *common sense* attitude to questioning, is going to have a hard time. As Eades comments "in classrooms, in law courts and police stations, Aborigines often reply to questioning with silence".

A proper recognition of the role of members' resources in the interpretation and production of texts is the principal relevance of discourse analysis to legal practice, with recognition that these resources are socially produced and not evenly distributed throughout the community but at least differentiated in relation to discourse, genre, narration, text and ideology.

The lawyer who apparently throws a wild card into court procedures may be exploiting this dialogic nature of interpretation, ie that interpretation proceeds in dialogue with the internalized members' resources. A newspaper article on Sydney lawyer Bruce Miles quotes a lawyer as saying, "I don't think lawyers like to come up against him because you don't know what he will do". The journalist then reports a colleague of Miles telling a story about him:

> Bruce rarely turns up on time, because he will have gone to help some other poor man. This time he came about an hour late. The jury had been empanelled and the Aboriginal defendant was in the dock. Bruce asked the judge what the charge was, then asked the man to stand up. Bruce ran his hands through his hair, and said quietly but so the jury could hear: 'So this boy has been charged with rape. What a good looking boy.' The man was acquitted.[21]

If the journalist reported the colleague accurately, the colleague can be read as seeing some causal connection between the acquittal and Miles' opening remarks. If we accept this, what members' resources would readily construct an interpretation of *innocence* in the context of Miles' remarks?

First, an ideology which supported a sexist discourse as dominant. From this point of view, *good looking boys can get girls, they don't have to resort to rape.* This is a sexist discourse because feminists have repeatedly urged the interpretation of rape as sited in power rather than sex, a desire for dominance practised in sex.

Second, an ideology which supports a racist discourse, but which also supports a humanistic discourse (the importance of the individual) - discursive incompatibilities in one individual are quite usual. From this point of view, *I don't think much of*

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20 FAIRCLOUGH, *supra* note 1 at 47-49. *See also* P. GOODRICH, READING THE LAW: A CRITICAL INTRODUCTION TO LEGAL METHOD AND TECHNIQUES (Blackwell 1986); P. GOODRICH, LEGAL DISCOURSE: STUDIES IN LINGUISTICS, RHETORIC AND LEGAL ANALYSIS (St. Martin's 1987); and KRESS, *supra* note 10.

21 The Sydney Morning Herald, 14 April 1990 at 9.

Aboriginals in general, but when you take a good look at him as an individual he's not so bad.

Third, an ideology which supports a fearful world view (think of Fanny Price in *Mansfield Park!*) and an identifcation with the victim, that is, with the one perceived as less powerful. (This is a point of view surprisingly supportive of law and order regimes, because of its timidity.) Here the antithetical collocation of *boy* - not to be feared - and *rape* - to be feared - is resolved in the repetition of *boy*, together with its collocation of a socially positive evaluation. This nice not-man is no threat.

There are other positionings for interpretation but the general point is that the textual link between these remarks by Miles, and the subsequent text of the case, is so open that they can be read as cohesive from many points of view.

This example supports a hypothesis that polysemic plausibility, rather than rationality, increase the chance of a successful verdict. One speculates that Miles knows about his juries - it is part of his legal practice to interpret them - and, if the *story* told of him overall in the article is to be read coherently, it will be in the construction of his dominant ideology as one supporting the socially powerless person rather than some abstract principle of the law.

Conclusions

In looking for examples to quote in discussion those to do with Aboriginal people were not deliberately sought. Close reading of newspapers for *legal news* brought home the notion that, apart from articles on failing corporate media stars, most legal news concerned cases involving an Aboriginal.

Whether editorial policy on the *legal stories* regarded as newsworthy has misrepresented the relative number of such cases in the overall system of justice, it seems clear that the interaction of Aboriginals with the institution of the law is a site of continuing crisis in contemporary Australian society.

Discourse analysis, along with the analysis of social practice and ideology generally, can help clarify just why those involved are mutually unintelligible to each other. One of the first texts to closely study might be the one quoted below and written by Robert Hopkins, a 24 year old Queensland Aboriginal. Hopkins wrote it some hours before he committed suicide in the Rockhampton Correctional Centre at the beginning of April 1990.

The 'he' of the first line refers to Russell Lawton, another Aboriginal, who had hung himself in the same prison earlier in the day:

The sentence he was serving has ended overnight,
from this stinking system,
let's stand up and fight,
but for our poor brother it ended with his life.

How many more blacks must die before the white man
understands,
that all he wanted was to be left alone and given a
second chance,
to be back with family and friends when his time
was due,
but it makes me feel so old inside 'cause it could
have been me or you. [22]

22 Reported in The Sydney Morning Herald, 6 April 1990 at 1 and 4.