
WHAT DOES SANCTIONED TRADITIONAL PUNISHMENT LOOK LIKE?

by Kenneth Lechleitner

INTRODUCTION¹

What does sanctioned traditional punishment look like? Where does Australia's Aboriginal peoples' law come from? These questions have been asked by many people in Australia in both the past and present and they will be asked into the future in some form or another. Therefore, there is a need to analyse these questions and their answers.

To understand the law one has to look back at the construct of the two systems of law that exist here today: the Australian Westminster System of law and Australia's Aboriginal peoples' law ('Tnangkarrā'). In this paper I briefly explain where Tnangkarrā comes from and how the Tnangkarrā legal system operates (still present today as it was in the beginning), from the perspective of the Aboriginal people of the Central Desert Region of Australia. I explain the ideology and methodology of Tnangkarrā and what it does to shape the lives of the traditional people that honour it, making comparisons with the Australian Westminster System of law. Within the Tnangkarrā setting, I then explain the place of 'traditionally sanctioned punishment' and what it looks like.

TNANGKARRA

The fitting questions to begin with are: where does Tnangkarrā come from?; and why and how is this process understood throughout Australia amongst the different groups of Aboriginal people?

The Tnangkarrā/Dreaming for the Relha (the Aboriginal person as in the plural sense) presents the origins, nature, methods, and limits of human knowledge as codified instructions. These patterns are the area of culture known as religion. Relha's law has three layers: Traditional Altjirra Law ('Altjirra Law'); Cultural Tjurunga Law ('Tjurunga Law'); and Customary Kinship Law ('Kinship Law'). It is a homogenous structure, because all Australian Aboriginal tribal groups have a uniform reference to Tnangkarrā/Dreaming or the Dreamtime creational world view:

Dreamtime, or Dreaming, Aboriginal religion for desert people, is the moral code which informs and unites all life under one Law, the [Tnangkarrā] Jukurrpa ... The body of knowledge and

beliefs about the ancestral travels is shared jointly as a sacred trust by men and women.²

This world view is the homogenous aspect of the two upper levels of Relha's structure of law, the *Altjirra Law* and *Tjurunga Law*, which are uniform and unchangeable by humans. For those that honour this, it forms their construct of law to live and be guided by.

The third layer, *Kinship Law*, is the process where it is exchangeable and specific to tribal groupings of people. In this way Relha's law is also heterogeneous, customary to an area and group of people. This aspect of Relha's law has often been over-looked.

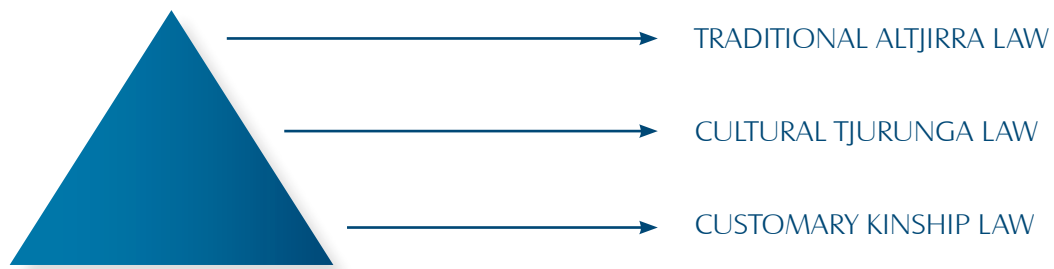
RELHA'S (ABORIGINAL PEOPLE'S) TNANGKARRA/ DREAMING STRUCTURAL LAW

THE TRADITIONAL ALTJIRRA LAW is the understanding that a supernatural or ancestral being, Altjirra (God),³ gave legal instructions to the Relha in the period termed as the Tnangkarrā/Dreamtime, with ceremonial language and common symbols that linked all the different tribal groups. This term, the Dreamtime, is referred to as 'Tnangkarrā' in the Aranda language and 'Jukurrpa' in the Warlpiri, Luritja, Pitjantjatjara, Alyawarr, Anmatjere languages—all meaning the same thing.

THE CULTURAL TJURUNGA LAW is the process of ceremony that allows Aboriginal people to adhere to Altjirra Law. Following Tjurunga Law allows Aboriginal people to adhere to Altjirra Law by reflecting on the Dreamtime supernatural beings through song lines, and by practicing living according to the given law with its interpreting instructions. These two laws are set in stone, so to speak, with ceremonial language used as a guide to follow.

THE CUSTOMARY (KINSHIP) LAW is the only thing that becomes different and unique for people in different regions, where laws are defined by environmental setting, for example inland, coastal, desert, riverbank and tropical forest. Kinship Law is therefore heterogeneous, amendable

RELHA'S (ABORIGINAL PEOPLE'S) TNANGKARRA/DREAMING STRUCTURAL LAW



for tribal groupings based on best practice in a given region depending on what's done in that environmental setting.

Therefore, when you look at this whole multi-tiered process of law from its origins it defines the structure of law as being homogenous in nature, and heterogeneous as well. One would question how this is possible when Aboriginal People clearly speak their own different languages throughout tribes and regions. However, within the Central Australian region people are still using the secret sacred language (Altjirra) as the language used to follow the codified Tnangkarra instructions. This language does not allow for everyday conversation to happen between groups because it is the Altjirra language used only for ceremony, not to be used any other time or for any other reason. The respect and honour of the language is still adhered to today. This language is the ceremony language, which allows for retracing the supernatural beings as Altjirra laying down the laws to follow as humans. Women have their own laws as well, that men cannot over step, thinking that they are superior; in fact they are equal according to the Aboriginal structural system of Tnangkarra Law.

The Aboriginal society also functions in a framework of reciprocity, where in almost every human activity within everyday-living, exchange takes place. Each group is dependant on each other for humanity and social goodwill between neighbouring tribal groups. It is a common law amongst groups of Aboriginal people that honour their own structure of law—with rules of evidence and practice and procedures that set out the rights and privileges of citizens—and which honour each other's place and space and ownership.

This relationship is strengthened through ceremonial participation and marriage arraignment, where a child that is married-off has two roles and responsibilities to adhere to in living: on the mother's side he/she becomes the Kurdungurlu (care taker, quality controller) and on the father's side he/she becomes the Kirda (owner). For

Australian Aboriginal groups this is a way to eliminate feuding. Developing avoidance relationships with neighboring groups allows for free movement within tribal groups. These aspects play an important role in forming the structural function and operation within an Aboriginal community that enables swift closure to any problems arising in the event of someone breaking the law, including the killing of another person internally (in community) or externally.

SANCTIONED TRADITIONAL PUNISHMENT

Discuss the word 'payback' in the English language and it conjures up mixed emotions and misunderstandings that muddy the real meaning behind processes in setting things right. The word 'payback' has become an ugly word with a meaning that doesn't represent the process and methodology that allows for the 'cleaning of the slate'. In fact, the word 'payback' just rolls off the tip of the tongue and classifies (in Central Australia) any ruckus within the Aboriginal groups in town. This has not been educational for the general public or for those responsible for designing 'governing policies', who are trying to understand what is going on.

The media has a field day with the word payback and then goes on a mission to find out what it is, at the same time failing to report on the true meaning of what sanctioned traditional punishment looks like. Although people have tried to explain the matter, one of the problems encountered is that it is a topical question that is only of interest when someone has been killed. With emotions running high amid the process for venting, this highly emotional matter can become ugly if not managed correctly. In fact, on most occasions the offender is apprehended and taken into custody, which then delays or impedes the process of negotiating sanctioned traditional punishment, after all the first layer of law has been broken. The same section of law (Altjirra Law) according to the Tnangkarra structure provides the process of action that needs to be followed in order to remedy the conflict. This is where the management of this process is so important,

the right people in this conflict set dates for events to take place and everyone understands what is expected of them.

For a community within the Central Australian region, in the case of someone killing another person, all the lead up work related *Relha Nyinterruma apha Urrparintjia* (the Sorry Business ritual) that occurs when there is the death of a community member is adhered to, but this time with a final cleansing ritual taking place to wipe the muddied slate clean with the spilling of the blood of the perpetrator and (at times) the perpetrator's family members—lightening the burden for the perpetrator. The perpetrator is shown love and is loved by his/her family members that have moiety obligational responsibility to the perpetrator during the process of the cleansing ritual and during the after-care and rehabilitation of the perpetrator.

For the purpose of this discussion we will assume the perpetrator has killed the victim somewhere in a township. This matter brings the community and the township into disrepute or friction. The perpetrator will be summoned by his/her own family members to appear at home, after being escorted back home by a family member. This perpetrator will be kept away from the major community under care and watch, but at all times being counselled by members of the family, who will be stating that once the punishment is done it will set a new, much closer, working relationship.

The family members from the perpetrator's group will have a group meeting together, they will then select who will carry out the punishment from within their own family, or they will present names of who from the victim's family should carry out the punishment. The victim's family will be meeting amongst themselves and deciding who will then go and talk to the other side with the selected person that will carry out the punishment of spearing.

The members of the two parties will meet and set a time when this should happen. In the more modern day process, so everything is negotiated and done the right way, a request would be presented to the perpetrator's lawyer to ask the Judge in charge of the case to release the offender. Once the time and day is set, the preparation begins to take place and the victim's family will prepare the weapon for the cleansing ceremony. In this type of gathering it is cultural practice for everyone to be armed with weapons; this is not for them to get involved, but to watch with weapon in hand to shield off and control the process from getting out of hand. Everyone is a part of the cleansing ceremony and participates as peers. In other

words, people are involved in the process of being present in judgment and witnessing the event. At the same time children are informed as to what is going on.

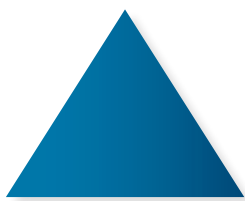
The perpetrator is brought to the ceremony meeting place by his/her older relatives. Everyone would be assembled there on opposite sides and with other onlookers forming a third group. This whole process takes place in open view with peers as witnesses to the event and that the perpetrator has cleared her/his name. Just before this takes place, as an obligation response to the perpetrator, a family member or two will first offer themselves to be speared. This shows that although the perpetrator has brought this problem to the family it is going to take the family to unlock this problem and reset or restore justice within the community—by offering themselves as men and women of traditional law and holders of the cultural principles. At no time is the perpetrator isolated and dealt with in isolation without being shown love—his/her own family members offering to take the punishment is part of them demonstrating their love for the perpetrator. The perpetrator is comforted and given supporting love before and during his/her ordeal. Throughout this ceremony there is love and humanism displayed by all while punishing the perpetrator. At the same time the ceremony is showing or displaying that this is what happens when this type of law is broken.

The remorse for committing such an offence can only be cleared by a person offering themselves at the mercy of the victim's family while in the presence of its community, as peers passing judgment. The blood being spilled symbolically cleans the slate and restores faith in the capacity of the perpetrator to participate in the community without fear or stigma, but as a fully restored member of the community again. The victim's family will state that, 'you have cleared your name and the families' name, we have no problems any more, and it is cleared, no other judgment can be placed upon you.'

In all societal tribal groupings the need for controlling and commanding members into adhering to a standard of behaviour that is acceptable has to be taught. The teaching in relation to most societal punishment is just focused on the punishment and there is no re-inclusion into the society. Whereas in the case of Aboriginal sanctioned traditional punishment, the cleaning of the slate is the methodology of someone regaining the faith and trust of their peers. The unification is humanism at its best. The saying goes that they (the families) will then eat from the same fire the food that they prepare and share with each other in reciprocity; they will always have time for each

FIRST AUSTRALIAN SYSTEM OF LAW

TRADITIONAL ALTJIRRA LAW
CULTURAL TJURUNGA LAW
CUSTOMARY KINSHIP LAW



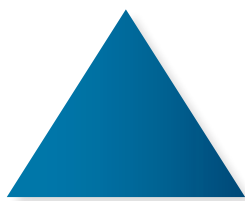
The source of this law is a supernatural being.

The first two upper layers are God's law and as such are unchangeable by man.

However, the Customary (Kinship) level is very flexible, opportune for changing and developing new ideas, such as policies and codes of practice.

THE AUSTRALIAN SYSTEM OF LAW

CONSTITUTIONAL LAW
LEGISLATION/REGULATION
POLICIES/CODES OF PRACTICE



The framework of this law is written by man. It also has reference to 'God' in some of its ceremonial aspects, but at most it's secular in practice.

The two upper levels are difficult to change, with the upper-most level being particularly difficult.

The scope for sound working and flexibility is the policies and codes of practice (third level).

other and remind the public that this matter has been resolved and there is no need to revisit it again because the slate is clean, and peace is restored *rilarerrama* (coming together as one).

TRADITIONAL 'TNANGKARRA' LAW AND WESTMINSTER LAW

Viewing the two systems of Australian law side by side (shown above) presents the potential scope and possibilities of the two systems working effectively together, without being abrasive towards each other's source of law and construct. Collectively, the 'Kinship' and 'Policies/Codes of Practice' levels of law could provide a new working foundation for all Australian's to move forward whilst being respectful of each others epistemological construct of law. If this were to happen then we could celebrate this notion of having dual heritage and dual responsibilities towards each other.

CONCLUSION

The two systems of law can work effectively with each other, it does not have to be an us and them approach to writing the kind of laws that we can be governed by. The explanation presented as to what sanctioned traditional punishment looks like draws on this principle and presents an opportunity to apply a methodology of writing sound laws that accommodate two different legal constructs—that are not too foreign from each other in that they both have similar processes of controlling and commanding their adherents. We can truly write these kinds of laws by focusing our attention on the 'Customary' and 'Policies/Codes of Practice' levels of law. If we choose to make a unifying structure of law together, the responsibility will rest with the voting people of this country. The result

will be the notion of dual heritage and dual responsibility towards each other as citizens of this great country, Australia.

Ken Lechleitner is a Consultant with Two-Ilpa Bi-Cultural Consultancy. Ken is a traditionally orientated, cultural person and is a current mature-aged Law Student with the Charles Darwin University in the Northern Territory, having previously completed a degree in Aboriginal Studies from the University of South Australia. Ken speaks the Anmatjere, Aranda and Warlpiri languages of his region.

- 1 The information presented in this article is drawn from interviews in 2008 and 2012 with Family Elders in the Central Desert Region of Australia; Two-ilpa Bi Cultural Consultancy ('Two-ilpa'), Interview with Family Elders: Anmatjere, Western Aranda, Luritja, Warlpiri, 2008, 2012.
- 2 William Edwards, *An Introduction to Aboriginal Societies* (Cengage Learning Australia, 1988) 65.
- 3 In different languages: Altjirra is also referred to as Wapirra (in Warlpiri), Maama (in Pitjantjatjara) and Kaatutja (in Luritja)—all refer to God.