

ABORIGINAL WOMEN AND THE LAW

Carol Thomas and Joanne Selfe

Don't stereotype an image of what you want me to be
I'm a Woman and I'm Black and I need to be free
I'll give back your sense of values you bestowed upon me
And regain my pride, my culture, and true identity
(Johnson 1988, p. 23).

For over 2000 generations our people have stood on this land. As women we had our own special relationship with the land. Whilst we had the same status as men, we still remained sacred and separate. We had rights as individuals. We were able to exercise well-defined rights of ownership of the inherited regions of our tribal territories. Inheritance was through the mother's side. We were recognised as being economically productive. Our work was valued because of our role as mothers and food gatherers. Women's labour provided consistent food for the whole group.

We had our own magic. We had our own religion. We had our own rituals. We had our own ceremonies and corroborees. All to which men had no access (NSW Women's Coordination Unit 1991, p. 8).

ABORIGINAL PEOPLE ARE NOT A HOMOGENEOUS GROUP. THIS PAPER IS based on work done with Aboriginal people within New South Wales and therefore talks about problems and solutions Aboriginal women face within that State. This is not to say that some of the issues are not relevant to Aboriginal women in other States and Territories. However, the assumption cannot be made that what is being said by the women of New South Wales is also what is being said by all Aboriginal women in this country.

The situation in which Aboriginal women are now placed and in which they are viewed by the non-Aboriginal population must be seen in light of the way Australia was "settled" and the consequences this had for Aboriginal people in general, in particular the consequences for the country's indigenous women.

It is important to recognise that Aboriginal society was one which gave all members equal importance. Even though men and women had different roles, those roles were equally significant and both genders contributed equally to a well balanced, functioning society.

The white men arrived and so too did a white value system which saw a different type of person (that is, white and male), placed at the top of the ladder. Along with their racist, pre-conceived notions of Aboriginal people, they brought with them a new legal system, incredible levels of uncontrolled violence and a belief that women did not have the same importance or significance to society as men. In general, they attempted to re-create what they had left behind: a society which did not function particularly well, and which included notions based on those who this society considered deserving and those considered undeserving. Aboriginal people fell into the category "undeserving".

It has been easy for the new white population to assume that Aboriginal women were not equally important to Aboriginal men. It was, and continues to be, easiest for non-Aboriginal Australia to force its own sexist and racist value system upon the indigenous people of this country. White women had their "place" determined by white men. The assumption was that Aboriginal women would have the same, if not lower, social position. The new population simply never considered that Aboriginal society placed equal importance on all members of society. As a result, Aboriginal women were denied a place in the new patriarchal society of white politics, power and violence (Thomas 1991, p. 86).

Aboriginal women face both racism and sexism. Women do not always like the idea of being classed as a feminist because they feel that to be this they have to leave their men behind or leave their community, rather than recognising the rights of women as individuals. Before making judgments, it must be remembered that Aboriginal women have additional barriers which non-Aboriginal women do not have to face, stemming from a drastic and rapid change in lifestyle, changed roles and responsibilities and a shift in power structures within communities.

Consultations

This paper is based on community consultations undertaken in New South Wales by the Women's Coordination Unit. Not all consultation was specific to the law, yet the Aboriginal women participating felt that Aboriginal women and the law was an area of significant importance and, as a result, it was discussed at length.

The following are the relevant consultations:

- n In 1990, New South Wales held its first Aboriginal Women's Conference. The agenda was set by Aboriginal women from all over New South Wales and over 400 Aboriginal women participated in the conference. The conference addressed a number of issues of concern to Aboriginal women such as housing, education and employment. However, dominant items on the agenda were violence against women, women in prison and various aspects of the legal system.
- n In August 1990, two women undertook the "Surviving Rape Campaign". The aim of the activity was to raise public awareness about sexual assault and about the availability of support services and responses of legal agencies.
- n The *New South Wales Domestic Violence Strategic Plan Discussion Paper* was launched in January 1991. The paper was primarily an issues paper which listed many of the issues surrounding domestic violence. The Discussion Paper addressed domestic violence from a broad-based

perspective and went beyond legal responses. An Aboriginal consultation was held which made it clear that special strategies need to be developed in response to issues specific to Aboriginal communities.

- n The Women Out West Project concentrates on remote towns in the far-west of the State. The project is a response to a request from community women who felt that the few services which visited their town were not effective for a number of reasons. For instance, people representing the services would go to centres that the Aboriginal people did not feel comfortable attending or they would only be in town for half a day. The women believed that with the information and support, they could provide more effectively and more regularly for their community. The project is based on the belief that some under-resourced communities will never be properly resourced. The project provides information to community women who then are able to act as resource people for the rest of their community. A large part of the project deals with legal information, particularly as it relates to domestic violence, family law, sexual assault and areas of law which are of particular concern to Aboriginal women. The project is coordinated by the Women's Legal Resources Centre.
- n The Women's Coordination Unit commenced a project, Aboriginal Women and the Law, at the end of 1991. The objective of the project is the development of strategies to ensure that New South Wales legal processes are accessible, appropriate and equitably available to Aboriginal women. The aims of the project are to enable Aboriginal women to have more equitable access to the legal system, in particular in the areas of Family Law, Criminal Law, Child Welfare and Civil Law; and to develop increased responsibility towards, and an awareness of the needs of Aboriginal women in government departments and community organisations dealing in legal matters. The first phase of this project, the research and consultations, is nearing completion.

Issues raised through consultation with Aboriginal Women

Access

The women identified lack of access to the legal system as a major concern. It was acknowledged that the present legal system is not necessarily appropriate and that community strategies need to be developed to make that system more accessible and effective. However, Aboriginal women need to be able to make informed decisions; that is, whether they choose to use the law or whether they choose not to use the law. In most instances the choice is taken away from them by the legal system's inability to provide a culturally appropriate and sensitive service. Once Aboriginal women are allowed to make that choice, they may decide that the legal system is not the way they wish to go. The law is by no means the only answer, but it must be one of the options.

Lack of responsiveness of the system

There are a number of very obvious reasons why Aboriginal women generally, are not using the law. The legal system has not been kind to Aboriginal people and has

contributed to the stereotyping of Aboriginal women. The following is a list of statements from court cases in which Aboriginal women were the main witnesses:

Rape [is] not as seriously regarded in the Aboriginal community as it is in the non-Aboriginal community (McCorquodale 1987, p. 391).

rape [is] not considered as significant in Aboriginal as in white society—more as a matter of dishonour so far as the women's husband and family are concerned (McCorquodale 1987, p. 408).

. . . I have no doubt it is my duty to do what I can to deter you, and people like you, from acting in this way, and to offer such protection as the law can provide for white women in remote places. Your crime would, I should think, be disapproved by Aboriginal people as well as by white, no matter how tolerant the Aboriginal attitude towards rape may be (McCorquodale 1987, p. 399).

Appellant's lack of awareness of criminality [is] a product of an ethnic background coupled with a form of life within a community which has standards of sexual conduct very different from the standards accepted by the general public and the laws of this State (McCorquodale 1987, p. 406).

Opinions such as these, stated publicly by prominent white men, do nothing to empower Aboriginal women but further alienate the women from any legal processes.

Throughout the consultations for the Aboriginal Women and the Law project, women spoke of their concerns when appearing before the courts because of their fear that the system has been used against them in the past. Many women see courts as the place you are made to go when charged with an offence and therefore a place to avoid.

When asked the question "Do you receive the same service as non-Aboriginal people", some of the comments from the Aboriginal women consulted included:

We get hurried through, even young kids, just to get rid of us;

Police prosecutors don't understand Aboriginal culture and have no concept of community perceptions;

They stereotype Kooris, they think we deserve domestic violence;

We should be told about Victims Compensation;

We're told to plead guilty even when we're not;

Women are not informed of their rights or entitlements.

Basically, women complained that services were not always equitably available to them.

Violence against women

Little data exists which provides evidence of the high level of violence against Aboriginal women or Aboriginal women's use of the law. Statistics which exist on violence against women and their use of the legal system claim to include Aboriginal women in the overall data but do not have specific data relating to Aboriginal women.

It is questionable whether the available data includes Aboriginal women at all as it is often taken on court appearances, Apprehended Violence Orders, contact with the police and so on, avenues which Aboriginal women rarely take. The NSW Bureau of Crime Statistics and Research (1991) found that the highest number of Apprehended Violence Orders were sought in low income areas of Sydney and therefore concluded that domestic violence was more prevalent in low income areas. The research did not include Aboriginal women and, in fact made no attempt to do so. It did not look at the reasons why Apprehended Violence Orders are not being used effectively by Aboriginal women or if Apprehended Violence Orders are appropriate to Aboriginal women.

Reports on court statistics do not include Aboriginality. The few statistics that do exist are not an indication of the level of violence against Aboriginal women.

Domestic Violence Advocacy Service

The Domestic Violence Advocacy Service Client Profile report (MacAlister 1989) states:

that of the 520 women who rang their service, only one Aboriginal woman sought their advice, four referred and none was represented by the Domestic Violence Advocacy Service. This is compared to 176 Australian born women who sought advice, 242 who were referred clients and 102 who were represented by the Domestic Violence Advocacy Service. Reports on court statistics etc, do not include Aboriginality. The few statistics that do exist are not an indication of the level of violence against Aboriginal women.

A recent SBS *Vox Populi* program, contained a segment about domestic violence in Aboriginal communities and responses by legal agencies. The program focused on the north-western town of Bourke. It was stated that Aboriginal women within the town seek apprehended violence orders but then do not attend court. The reporter stated that the failure to attend court was termed by the local people (presumably the non-Aboriginal people within the legal process) as "the Bourke defence". The explanation of "the Bourke defence" did not take into account the reasons why such large numbers of Aboriginal women do not follow through with court processes. The term rather flippantly dismisses the real concerns of, and barriers facing, Aboriginal women.

The Mortality of Aboriginal Australians in Western NSW 1984-1987 (Gray & Hogg 1989) states that "accidents, poisoning and violence" is one of the two major categories of death for adult Aboriginal people in western NSW. Within this category, "homicide" is one of the few causes of death where female deaths occur in greater numbers than men. Specific causes of death include stabbing, shooting, manual strangulation (p. 38). The Report does not state who killed the victims or the relationships between killer and victim.

The Northern Territory report *Aboriginal Women and Violence* (Bolger 1991) does detail a number of statistics relating to Aboriginal people. In the Northern Territory in 1989, offences against Aboriginal women (murder, attempted murder, assault and sexual offences) represented 18 per cent of total offences. At that time, Aboriginal women constituted 11.5 per cent of the population (p. 11). The Report states that there has been an increase in violence against Aboriginal women since 1982. In the January/February 1989 period, the Royal Darwin Hospital treated thirty-three Aboriginal women for injuries due to violence (compared with fifteen non-Aboriginal women). Sixteen of the thirty-three Aboriginal women were treated for injuries sustained by weapons, compared to two of the fifteen non-Aboriginal women.

In 1990, the New South Wales Aboriginal Women's Conference made the following recommendation:

That the Attorney-General establish a working party to review the effectiveness of the Children's Court and the effectiveness of the criminal law system in relation to the needs of Aboriginal women and children who are victims of sexual assault. Aboriginal women have stated their feelings of alienation with the legal system. This system must be examined to determine how best it can include the needs of Aboriginal women and children. The terms of reference for the working party should include:

the number of cases of sexual assault involving Aboriginal women and children which are reported;

the reasons why such a low number of adult and child sexual assault cases are being reported;

how court rules and procedures affect Aboriginal women and children as witnesses;

the adequacy of Section 409(b) of the Crimes Act be examined in relation to Aboriginal women;

the development of strategies which would make the Children's Court and the criminal law system more relevant to and effective for Aboriginal women and children;

consideration of support systems for Aboriginal child sexual assault cases.

The concern was that Aboriginal women victims were not being treated appropriately by the legal system and in return were not reporting sexual assaults.

New South Wales does not have comparable data to that available in the Northern Territory. In fact, the general data collected in NSW on violence against women statistically suggests that the incidence of violence against Aboriginal women is low. Anecdotal evidence of violence against Aboriginal women is high.

Aboriginal women recognise the legal system's failure to adequately meet their needs and in so doing, have attempted to develop their own community strategies.

A number of communities have established women's groups, formal and informal. One community has women's nights where women can come together and relax and discuss their concerns with other women who are aware of the particular sensitivities in their community. It acts as an informal method of support and friendship. Another community has organised a group of women who are able to accompany other women when they need to see a solicitor or police or when they need to attend court.

Mygunyah Aboriginal Corporation is an Aboriginal women's support service. It is based in Dubbo and has outreach services in Bourke, Brewarrina and Lightning Ridge. The service is operated by Aboriginal people and provides support for women and their children. It offers advocacy and help in obtaining services and assistance from relevant agencies, such as Social Security. It provides information on issues such as health, housing and child care, and provides accurate information on options and choices. Most importantly, it provides a safe environment in which women can be supported in their own decisions.

Community strategies are extremely important; however, they are not used as substitutes for due process. Both avenues need to work together in developing strategies and in finding solutions appropriate to Aboriginal women.

Lack of knowledge

Women are reluctant to become involved in the law when they are unaware of the processes and when the initial contact people are unsympathetic to Aboriginal women's concerns.

One of the major problems facing Aboriginal women is that of getting access to appropriate information. Different problems exist for different communities. A rural or isolated community may simply not have any appropriate services and therefore, information within the town is fairly limited. Information dissemination can also be a concern in urban communities where services may exist but do not employ Aboriginal workers or who are not culturally sensitive to the needs of Aboriginal people.

Aboriginal women are not being told about the processes of the legal system or about what the law can be used. Women are not encouraged to use the law. They are aware of the law as defendants but are generally not aware that the law can be used effectively in matters which benefit them.

The Clerk of the Court in one particular community with a high Aboriginal population kept relevant pamphlets and forms in his filing cabinet. His explanation for his actions was "because they could ask for them. If we left them out everybody would take them". It is difficult to understand why pamphlets containing information on legal rights cannot be taken by the people who need them the most. It is also alarming to know that government departments are unable to keep up the supply of pamphlets to many isolated towns.

One area relevant to Aboriginal women is that of victims' compensation. During consultation for the Aboriginal Women and the Law project, very few women were aware of their legal rights in the areas of victims' compensation, family law and child welfare.

This consultation was the first time many of the women had heard about victims' compensation. It is alarming to know that women are not being told that they are entitled to apply for compensation if they are victims of violent crimes. It is worrying when one considers that:

Aboriginal women as individuals, wives, mothers, sisters, and so forth have a greater chance of contact with the criminal justice system than non Aboriginal women. They have a higher risk of imprisonment, a higher chance of experiencing violence or homicide, and from harassment by the police, than non Aboriginal women (Payne 1990, p. 10).

Cultural inappropriateness

The legal system has not responded to the cultural values and the varied backgrounds of Aboriginal people. The formality of a courtroom, the language, the dress, the questioning techniques have all been addressed by other writers and are all relevant to Aboriginal women.

The Federal *Sex Discrimination Act (1984)* is an example of non-criminal legislation which has little effect on Aboriginal women. The legislation and its procedures were developed without input from indigenous women and as

a result there are a number of procedures which are not culturally appropriate. For instance, to be able to use the legislation, it is necessary to first be able to determine that you are being discriminated against because of sex. This might appear to be an easy thing to do to the wider community but may not be so to Aboriginal women who see gender and race closely intertwined.

The processes involved in making a complaint under the Sex Discrimination Act means that, once the woman has determined that the reason she is being treated unfairly is because she is a woman, she must then give a written complaint to the Human Rights and Equal Opportunity Commission. Firstly she needs to know that this has to happen and she needs to know who deals with the complaint. A written complaint, no matter how short or seemingly simple, will always be a very formal way of complaining to Aboriginal women. The process assumes a prior knowledge and assumes that all women are comfortable with writing. She must then be prepared to conciliate with the offending party and, failing conciliation, go through with a hearing. Is it realistic for an Aboriginal woman living in a small country town who, for example, may wish to make a complaint against the town's only shopkeeper, to use the Sex Discrimination Act? The legislation and its procedures fail to recognise that some people do not see gender as a stand alone issue. Aboriginal women are discriminated against because they are women, but also because they are Aboriginal. Obviously, no person can make use of something they do not know anything about.

People do not voluntarily use processes that they do not consider to have an effect. Aboriginal women have many factors affecting their lives. They may have problems getting access to appropriate health care for themselves and their families, employment related issues, problems with the children's education, difficulty in getting fresh food and clean water. Many women leave support networks in the final stages of their pregnancy to give birth hundreds of miles from home because the absence of doctors means that hospital staff are reluctant to take responsibility for childbirth. Given the situation that many Aboriginal women face, voluntarily taking any type of legal action is not high on their agenda.

At the moment, there are three complaints from Aboriginal women under the Sex Discrimination Act. These complaints have only been made in the last twelve months. Basically it means that, because the legislation has failed to include the different needs of Aboriginal women within its development, Aboriginal women are unable to use the Act.

Summary

Aboriginal women and the law is not a highly researched area. There are a large number of areas where research needs to be undertaken, such as responses to apprehended violence orders, Aboriginal women as witnesses, on juries, victims' compensation, and so on. One area which needs urgent research and action is that of Aboriginal women in prison. As of 30 June 1991, Aboriginal women comprised 13 per cent of women within New South Wales prisons. Eight of these women were unsentenced and a further thirty of the remaining forty-three prisoners were serving less than two years. One of these women was serving a sentence for murder but the largest group (twenty-three) were in prison because of theft (New South Wales Bureau of Crime Statistics and Research 1991).

It is also interesting to note that recent work by Cunneen concludes that the Aboriginal prison population in New South Wales continues to increase as a result of the increase in the number of Aboriginal women in prison (Cunneen 1992).

There are many areas of the law which Aboriginal women have no knowledge of or which adversely affect Aboriginal women. For the sake of this paper, the authors have attempted to address the issue as broadly as possible but have not touched on the many community strategies which have been suggested to bypass legal avenues. It is important that Aboriginal women are put on the agenda in this area and that they are consulted and listened to.

Aboriginal women must have their importance—as this country's indigenous women and as individuals—recognised by legal processes. It is not acceptable to simply assume that Aboriginal women do not use the law because they choose not to use it. The legal system must now work and cooperate with Aboriginal women in developing a process which acknowledges and accepts their particular concerns and barriers.

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