CHAPTER X

Law and Order

Government throughout Aboriginal Australia is, or was, very largely informal and loosely organized. Inevitably, this has had a direct bearing on the maintenance of law and order.

For the majority of Aborigines loyalty is something localized, confined to the land and the people they know. Strangers, Aboriginal or not, are on a different basis, almost tantamount to enemies. Distrust and suspicion permeate relations between tribes living some distance apart, although these are pushed into the background when trading or sacred rituals bring neighbours together on conventionally friendly terms. As a partial counterbalance, when there is consciousness of a shared tradition, of ritual and sacred mythology held in common, this has helped to widen the horizon, drawing more people into the safe, known world of human beings. Quarrels and fights are not lacking, but in such cases they take place within the range of known behaviour, where the rules of killing or making peace are understood and accepted. The pattern or blueprint of behaviour is everywhere in traditional Aboriginal Australia framed in terms of the past. To put it a little differently, the mythical characters instituted a way of life which they introduced to human beings: and because they themselves are viewed as eternal, so are the patterns they set.

The dramatizing of sacred mythology, not on a casual or individual basis but as a collective enterprise, affirms the social identity and solidarity of the units taking part. As well, the combination of positive pressures with absence of serious dissent predisposes members of those units to accept traditional dictates of right and wrong. Through the sanction of religion, a moral rightness is ascribed to the premises on which that society rests.

Not everything that happens in myth, or in the multitude of stories which fall somewhere between the undeniably sacred and the undeniably secular, or mundane, is presented as a model for
Plate 44: Returning with the catch. At Tikatika rockhole, Gibson Desert, north of Warburton Range (1965).
Photograph: courtesy R. Tonkinson

Photograph: courtesy N. M. Wallace
Plate 45: Removing intestines in readiness for cooking. Musgrave Ranges (1940).

Photograph: courtesy C. P. Mountford
human beings to imitate in its entirety. The Djanggawul Brother and Sisters commit incest. Jurawadbad kills his own wife and mother-in-law. Bomaboma the trickster rapes a young girl, killing her in the process. Ancestral men steal, from women, the first sacred objects. Njirana spends most of his time following the Seven Sisters, the Gunggaranggara women. The two wives of Balangudjalngudjalng the White Cockatoo are unfaithful; pretending to go out hunting, they spend all their time playing with other men, until finally he tricks them into entering an inaccessible cave, high in the rocks, then pulls away the tree-ladder and leaves them to die. And so on.

But whether they represent the good or the bad example, the mythical figures are said to have laid down precepts or made suggestions of which people are expected to take notice today. They defined the broad roles to be played by both men and women in such matters as sacred ritual, economic affairs, marriage, childbearing, death. They warned that if people behaved in such and such a way, certain consequences would surely follow: that various tabus and avoidances had to be observed, that various relatives should not be intimate with one another. They set patterns of behaviour for members of the particular social and cultural group in which their power is acknowledged. The fact that they are regarded as sacred beings gives them a right to dictate in this way, and lends an aura of sanctity to their pronouncements. In some myths statements are framed in terms of what people should do, often as absolute pronouncements. In others they are implicit in the story or songs. A-social behaviour in this setting may point the way to alternative action: if you do that, the result will be this; but these words are not used, the sequence is inferred in the tale itself. Often such behaviour passes without comment, and in fact may not be considered wrong for the particular characters concerned. Although the mythical beings are in a sense ‘law-makers’, they are also above the law. They are more-than-human, not bound by the rules which restrict ordinary human beings. Being ‘outside the law’, or above it, is itself an attribute of power and sacred authority. Acts contrary to everyday conventions assume a sacred quality when carried out in particular contexts: a notable example here would be fertility rites involving sexual association between persons who normally avoid each other.

Some of the warnings, or positive suggestions, put forward by the ancestral beings have a practical basis, in so far as they have helped the people concerned to adjust to their particular environment. In many cases, in fact, they appear to embody the accumulated experience of numbers of generations. But this does not of itself ensure their recognition. It is the supernatural sanctions linked
with them which underline their significance, and supply cogent reasons for conforming to them.

CONFORMITY

Traditionally speaking, children grow up to accept these dictates more or less unquestioningly. The only conflicting impressions come through outside contact, at ceremonial or trading times, with members of other Aboriginal groups who hold perhaps slightly divergent views. This impact, however, is not on a large enough scale, or continuous enough, or involving sufficiently strong pressures, to have a significant effect on the maintenance of the status quo, at least in general or relative terms. This means that within, say, a certain tribe, there are recognized codes of behaviour on which its members are in fundamental agreement. There are, inevitably, some individual differences of opinion among them. In any sphere of belief and action the question of variation must be taken into account, not least as regards the degree to which actuality measures up to the ideal. In most cases there is a range of behaviour which is tolerated without being classified as irregular: this is obvious, for instance, in the choice of marriage partners. (See Chapter III.) Some areas of human activity are more tightly controlled than others. Alternative modes of action need not imply divergent or dissenting views: they may be simply different ways of expressing the same set of ideas or beliefs.

Nevertheless, within any given social unit certain rules and standards are acknowledged, certain patterns of behaviour considered right, as against others which are wrong. Informal as well as formal sanctions are likely to greet any obvious deviation from those patterns—a display of social conscience which is a result of traditional emphasis, and at the same time reinforces and strengthens the power of tradition. Two points should be borne in mind here. Firstly, permitted variation is not the same thing as deviation. Deviation is behaviour which is not tolerated, and against which sanctions of various sorts are exerted. Secondly, stressing this traditional aspect should not be taken to mean that ‘Custom is King’, that there is no scope for individual variation or individual initiative, as some earlier writers suggested: but it does imply that innovation is at a minimum and that these Aborigines are, in Riesman’s sense (1955), ‘tradition-directed’.

The members of an Aboriginal society who are supposed to have accumulated most knowledge and experience, and to be most conversant with all features of their own culture, are those fully initiated and no longer young—in many cases, the elders. Wisdom is not assumed to come automatically with increasing age. Personal factors are involved, too. A man, or woman, who by middle life
has achieved a reputation for incompetence or foolishness is not normally expected to improve as he grows older. On the whole, however, there is an emphasis on age, especially when it comes to providing a final decision on some debatable point—in much the same way that in our own society precedents are cited as a basis for legal judgments. Other adults do have an informal say, but they are considered to be less familiar with all the issues which may be involved. And because in the great religious sequences men take a more active role than women, some men come to have increased authority as ritual headmen. This lends weight to their opinions. Knowledge of sacred matters is a pre-eminent criterion, and people who qualify on this score are regarded as final authorities, or as human spokesmen for those authorities.

For children, and for minor offences, discipline is maintained largely by the immediate family. (See Chapter V.) Kaberry (1939: 76) mentions that she did not hear “frequent injunctions” to children to do certain things because it was the rule, or the norm, or the traditional way; “in everyday activities, children were told what to do without any preamble, and were slapped if they disobeyed beyond the limits of endurance”. This does vary. Restrictions are few for children, and punishment of a severe or prolonged kind is rare. Permissiveness is the theme of childhood. Children are told things and shown things, rather than subjected to a spate of injunctions. For a boy, this relative freedom comes to an abrupt end at the onset of initiation—which also marks a transition, as far as he is concerned, from predominantly parental control. In places where there is little or nothing in the way of physical operations, or ordeals, other means such as food tabus are used to impress on a novice the rules or laws he is expected to remember, and to observe. Quite probably, the experience of deprivation, or physical pain, or threat of pain helps to imprint on a boy’s mind the admonitions associated with it. Sometimes, of course, the physical ordeal is not a single event, but a series of events extending over a long period, paralleled by the learning process of which it is simply an external manifestation. When a girl reaches puberty, too, the physical experience may be surrounded with ritual which underlines its social significance, including relatively formal instruction spelling out the proper way for her to behave now she has achieved adult status. She is advised not to stare or smile at other men but stay quietly with her husband, to observe her kinship obligations, to share the food she collects, and so on. This brings together, in essence, what she has been learning in a more diffuse way from early childhood.

Often, then, although there are exceptions, puberty or initiation rituals are an occasion for summing up or emphasizing canons of social behaviour, positive and negative, many of which have already
been learnt, and for introducing new admonitions such as in the sphere of ritual. The shift in authority from the immediate family to the wider context of horde, clan, or tribal group does not prevent close kin from taking disciplinary action, but it means that more people are entitled to intervene, and that the actual parents may be overridden, or perhaps not even consulted. Correspondingly, during childhood a boy or girl is not bound by economic and other kinship obligations, even though he is encouraged to become familiar with them and to practise them on a small scale. The responsibility rests with his immediate relatives, especially his parents, just as it does in the matter of teaching and disciplining him. After about puberty, depending on the locality, this picture changes. A young man or woman will continue to receive advice and help, but is now increasingly committed to fulfilling his own obligations, just as he is increasingly held responsible for his own actions.

The sanctions which are drawn upon in the attempt to ensure conformity to accepted moral, ethical, and religious codes may be positive or negative, or a combination of both. The following are some of the most important.

**Positive sanctions**

Firstly, there are direct instructions, suggestions, or requests addressed to a growing child almost from the time when he can walk and talk in a reasonably intelligible way, conditioning him to accept certain tenets of behaviour as right and inevitable, and impressing on him the necessity to conform.

Secondly, some outlet is provided for socially harmful or destructive emotions in popular stories which show, according to local standards, a-social activity, such as a mother-in-law abusing a son-in-law. Listening to these allows an opportunity for relaxing the tensions and constraints which permeate various relationships, without being subject to the penalties of actually doing so. Listeners to stories of this kind, especially children and young adults, are able to enjoy the vicarious experience of breaking such tabus, with subsequent re-affirmation of their conformity. It is true that these could set a pattern for imitation, that the bad example could be taken as a model to be followed rather than rejected: but there is not enough reinforcement outside the story-telling situation for this to happen in more than a few cases.

Thirdly, provision for socially sanctioned extra-marital intercourse, especially during certain rituals, or in the convention of wife lending, helps to provide some sexual variety without upsetting the institution of marriage. It does not, however, prevent elopements, or adultery, from taking place outside that context.

Fourthly, rewards are offered for conformity: for example, ritual
and secular leadership—the 'big man' or 'big woman', the boss, the elder, the native doctor. Over-conformity to ideal standards is more likely to meet with uneasiness, if not outright criticism. Much depends on personal qualities, on skill and endurance, and, especially, on possession of sacred knowledge together with awareness of its practical implications. Social approval, ranging from lukewarm absence of disapproval to forthright enthusiasm, is accorded such persons as a ritual leader, a good hunter, a man who fulfils his kinship obligations, or a woman who is industrious in food-collecting, solicitous of her children, and faithful to her husband.

**Negative sanctions**

On the opposite side, as it were, are the negative sanctions. Because they are not the same throughout the Continent, it is not possible to list them in order of importance.

First, ridicule. This is a powerful weapon, but a two-edged one: it can provoke quarrels or exacerbate them, as well as restrain them. Even less constructively, it is extended to physical deformities or shortcomings for which the person concerned is not responsible: blindness, feeble-mindedness, mental defectiveness. It rarely takes the form of complete ostracism. The only cases we know relate to partial rejection: refusal to take seriously or even to co-operate with people classed as abnormal or 'deaf', foolish, not listening or responding to what they are told, or shown. (See e.g. R. and C. Berndt, 1951c: 75-89.) (Just as often, however, people who are blind or crippled or ill are treated with the utmost solicitude, even at great personal inconvenience to their helpers.)

Under this heading too we could include swearing or the use of obscenity. (See Roth, 1897: 184; R. and C. Berndt, 1951a: for example 190-1.) Again, this is dangerous to use, and can recoil on the speaker—who may, in extreme instances, be killed instantly. Scandalmongering and gossiping are common pastimes, particularly since much of people's private life is so public: but apart from this, gossip is treated as enjoyable and inevitable, and in fact a necessary part of social relations. Too much of it about a specific person can do him harm, malicious talk can build up trouble; but at the same time it can serve to control or modify the behaviour of people who feel they are vulnerable to it. Husbands suspecting their wives of infidelity, or wives suspecting their husbands, are ready to listen to tales about them. The context is important here: gossiping about whom, with whom, in whose presence, are points which must be considered. There is always the possibility that someone will carry rumours to an interested person, and this in itself is a restraining influence when it comes to behaviour which may be liable to misinterpretation (or correct interpretation, for that matter). Certain
LAW AND ORDER

actions should not be carried out blatantly if trouble is to be avoided. This applies, above all, to pre- and extra-marital associations—which make up the greater part of most gossip.

Secondly, the brother-sister tabu found in many parts of Aboriginal Australia. In some areas, a man is expected to punish anyone he calls sister if she uses bad language, neglects her economic, family, or ceremonial duties, gets involved in a fight, or is abused in his hearing. This can have a sobering effect on a woman’s behaviour when she is near an actual or classificatory brother.

Thirdly, there is fear of the supernatural punishment which may follow, without human agency, the breach of some tabu, or some sacred law—or if singing, dances, or various rites are not properly performed. According to Kaberry (1939: 75): “It is difficult to assess how far ngarunggani (the Dreaming) is used not only as a sanction, but also as a threat of supernatural punishment for the infringement of taboos”: association with a tabued relative may lead to sore eyes, incest to more or less immediate death, or eating forbidden food to a malignant disease. Most threats of supernatural punishments are framed in diffuse terms: not ‘If you do this, which is wrong, the great Djanggawul, Ngurunderi, or some other mythical being, will punish you.’ They are usually less explicit: ‘If you do this, which is wrong, you’ll become ill and die,’ implying that it is contrary to the established pattern of life. The creative beings established that pattern, and expect people to follow it: if they do not, the consequences are on their own heads.

Fourthly, there is fear of sorcery, which can be viewed as a powerful legal sanction. Even for minor offences, retaliation may supposedly take the form of sorcery. A corollary to this is fear of being accused of sorcery. If one person has an obvious grudge against another, who suffers some misfortune or illness or perhaps dies, he may be accused of bringing this about by sorcery. If a wife fails to look after her husband or vice versa, or if either of them neglects their children, the same accusation may be made should the spouse, or a child, happen to die. This need not, in every case, involve claims about the actual practice of magical rites.

Around Oenpelli, for instance, if a woman has sweethearts, or even one sweetheart over a long period without her husband’s sanction, and he subsequently dies, she is considered to have brought this about either directly, by weakening his heart, or indirectly by being careless about his belongings and leavings so that someone was able to take them for sorcery. A husband, therefore, normally keeps some check on his wife’s affairs. While up to a point he may unofficially tolerate them, he retains the right to discover them officially when it suits him, or when he feels it is time to intervene, by ‘dreaming’ about her activities. This latent threat of
'dreaming', with quarrels that are bound to follow, is possibly a potent factor in restraining married women from having too many lovers.

Fifthly, there is the threat of physical violence, of being injured or killed for some breach of the accepted code of behaviour. But this is sometimes employed to settle a grudge, or satisfy personal desires, under the guise of maintaining conformity to the rules.

In the sixth place, there is the threat of being not simply killed, but also deprived of the usual mortuary rites. A north-eastern Arnhem Lander put to death for some serious offence may be deliberately left lying where he fell, 'for dogs and crows to eat'. There are just enough examples of this to give force to the threat. Of course in feud killings too, especially where the persons concerned belong to different tribes or language-units, a corpse is left untended; but the assumption is that relatives are bound to do something about it, if they find it in time, at least for bone-disposal rites. This is very different to a punishment killing within the same language-unit, where deprivation of rites is part of the punishment, and relatives are prohibited from handling the corpse, under threat of meeting a similar fate.

OFFENCES WITHIN THE TRIBE OR CLAN

Offences within a tribal group can be summarized very loosely under two main headings. In the first place, and of primary importance, are breaches of sacred law—regulations, tabus, codes of behaviour, which are thought to have a clearly supernatural basis. To some extent this conforms to the concept of sin—that is, having a religious connotation. In the second place, there are offences against other persons, or against property. A number of offences seem to fall somewhere between these two, tending toward either extreme according to the seriousness of the implications. For instance, incest offences are also breaches of traditional and supernaturally sanctioned laws, while minor offences do not, in practice, have this significance.

Breaches of sacred law

Ritual leaders, meeting secretly, decide on the appropriate punishment—which in extreme cases is death. According to circumstances, two or more of them may take action themselves or delegate it to someone else. They may not tell him at first what they want him to do: the coercion may be more subtle. For instance, he may be given tabued food to eat, and afterward instructed to go and kill a certain person; or a sacred object may be put on his head (Arnhem Land), a form of compulsion against which there is no argument. Supernatural sanctions are occasionally invoked in mat-
ters of primarily personal vengeance, which may have wider repercussions. In the Daly River area a stone spearhead may be flung into the sacred ring place, to the accompaniment of ritual invocations, so casting an obligation on all initiated men to co-operate. During the period of early contact there, one man who thought he had a grievance against the European settlers is reported to have done this, and the result was what was described in the Press at the end of last century as the 'Copper Mine Massacre'. In other words, the supernatural authority is cited, or drawn upon, to provoke or substantiate physical action. Kaberry (1939: 76) notes the same point: “When some laws are disobeyed, punishment is inflicted by the old men who are concerned with maintaining the status quo and conformity to tradition. They are the instruments of justice. . . .” Occasionally, throughout the Continent, women or children either deliberately or inadvertently see sacred objects or rites which are prohibited to them: the conventional procedure is to spear them immediately, without further deliberation.

For a really serious offence against sacred law, any effective means can be used. A man may be speared in the back on a hunting trip, without warning, by one of his companions. And ideally, whatever is done, there is no redress, no feud: it is framed as punishment, not retaliation.

As an extension of this, group action may be taken against one of its members who does not respond to ordinary sanctions. A young man may be labelled, in effect, uncontrollable, if he refuses to keep away from other men’s wives—particularly if those men are ritual leaders. Even if he does not directly break any sacred laws, he is claimed to be a menace to people with whom he comes in contact. If he ignores repeated warnings, the assumption seems to be that nothing more can be done with him, that the usual teaching-and-learning processes and the usual sanctions have failed. In such an extreme case he is, or was, usually killed. A man who elopes with his wife’s daughter, or with a close mother-in-law, may be treated in the same way, again with the approval or passive consent of his own group—or, at least, of the adult men of his own group. Women may not even know what is contemplated, and certainly have little say in it.

Offences against property

Offences against property are rare, traditionally, in Aboriginal Australia. (See Sharp, 1934a: 38.) Tribal or clan land itself is not transferable, but regarded as being held in trust by living men and women for past, present and future members of that unit. Their ownership, in this special sense of the term, is supernaturally sanctioned. In the same way, deposits of red ochre or stone quarries
are traditionally inalienable. Small everyday items like digging sticks, baskets, mats, wooden dishes, fishing spears, and so on, are not normally stolen, although they may be borrowed in accordance with kinship obligations. But offences against dogs, which are regarded almost as members of a family rather than as personal property, may have violent repercussions. (In western Arnhem Land, for instance, in one mythical case, several large camps are said to have been wiped out after a man's special pet dog was unknowingly killed and eaten.)

Ritual stealing is a different matter. Two examples come from north-eastern Arnhem Land, one connected with the making of dua moiety feathered string, the other with the wuramu ceremony (jiridja moiety). Preparing native twine or string is women's work; adding coloured parakeet feathers to it is not. But men do not ask for, or take, the completed lengths of plain twine in a straightforward way. Secrecy is the essence of the transaction—and an expected feature of it. Symbolically, the reference is to the dramatic occasion on which men stole the sacred rangga from women in the Djanggawul myth. (See Chapter VII.) In the jiridja case a carved wuramu figure, a 'Collection Man', is carried through the main camp, and as it passes from hut to hut the men in charge of it take everything portable within reach. Both these forms of stealing are socially approved, in spite of some conventional grumbling about them.

Offences against the person

There are several facets to this.

First: if a woman injures her child in a fit of temper; or allows it to stray, so that it becomes ill or dies, or is never found again; or if she deliberately kills a full-term baby which was healthy and not physically deformed: these are family matters, and she will be punished by her husband, or her co-wives, or both. At least she will be criticized; and the topic will be kept in reserve ready to bring up against her in any dispute or fight. If she bears a child from a man of the same moiety as herself, technically a form of incest, then her husband or co-wives will usually kill it—or would do so, in the past.

Second: running away with another man's wife or, what it amounts to in most cases, another woman's husband. The injured party usually invokes the help of male relatives, if necessary sending out a message stick, or a war stick. This again is primarily a matter for the persons immediately concerned, although the ramifications of the kinship system may involve others as well.

Third: and especially important, there is murder or suspected murder. Generally speaking, there are three means of treating this.
One is by open retaliation in the form of violence. Usually this too is a family matter; the victim’s close relatives are expected to avenge him—or, less frequently, her. If one of them is not able to do this himself, perhaps because it would conflict with other kin obligations, he may (as in western Arnhem Land) hand over a special object associated with revenge to some man who is under an obligation to him. This man, whatever his personal feelings in the matter, is bound to carry out the actual killing. In western Arnhem Land the revenge object, the maigug, or wungbar, may be bound to the shaft of the spear used for that purpose.

Murders or suspected murders have led, throughout northern Arnhem Land, to so-called blood feuds extending over long periods and breaking out at intervals into open violence. Occasionally, the tribe or the clan as a whole is called in. In north-central and north-eastern Arnhem Land, a high premium is placed on fighting ability. A man who makes it clear that he will not hesitate to throw spears to get what he wants is admired as well as feared. He may even build up his reputation to a point where very few people will care to challenge him openly. To begin with, he may direct someone to kill a certain person. After that there will be another, and then another, plus claims of success in sorcery. If he can continue to get away with such behaviour he may come to a point when actual violence is no longer necessary—when all he need do is look threatening and rattle his spears. So long as he observes the kinship rules, and is careful to conform to sacred laws and ritual obligations, he is rarely punished. Old Wonggu of Caledon Bay, a Djabu-speaking man, had reached this status well before he died a few years ago. Compensation in goods may be offered, or demanded, for a death, but acceptance is no guarantee that revenge will not be attempted. In a situation where fighting qualities are emphasized, even to the extent that prestige can come from spearing a victim in the back, or while he sleeps, there is always danger of a breakdown in group cohesion, and eventually of reaching a state of affairs where physical force is the only recognized criterion. However, it is possibly only the contact situation which has permitted men of this kind to survive in recent years. In the past, men with a reputation for spearing or otherwise killing a number of people, for primarily personal or even family reasons, were as a rule eventually killed themselves. Their fighting careers were eventful but brief, since the cultural factors which allowed them to behave in that way operated also to support their opponents. By their very behaviour, they laid themselves open to retaliation.

Where, for some reason, physical vengeance is not practicable, another course is open. First the ‘murderer’ is identified to the satisfaction of the victim’s relatives. Then one of them performs
sorcery, or threatens to do so, or claims to have done so if that particular person becomes ill or dies. (See Chapter IX.)

A third means of treating an actual or supposed murderer, throughout northern Arnhem Land, is the magarada. We shall come back to this presently.

In central and southern Australia, grievances are often settled by formally spearing an offender in the thigh—particularly in cases of adultery, elopement and even personal injury: he may even stand quietly, offering no resistance, while the aggrieved party or one of his close kin throws the spear. A careless or angry spearsman may miss the thigh and strike a vital organ, or the wound may become infected, so that in the end the penalty is more drastic than was conventionally anticipated.

In a different context, the desire for revenge can be temporarily diverted into relatively harmless channels, provided it does not get out of hand. In western Arnhem Land a messenger bringing news of a death is caught up in a mock fight with men to whom he announces it. This is regarded as simply a formality, and ideally no blood should be drawn; but there is no reassurance that things will always go smoothly. Close relatives hearing the news for the first time are not expected to react calmly. A dead man’s brother, father, mother’s brother, a woman’s father or brother is carefully watched, and even forcibly restrained in case he uses violence to relieve his feelings, spearing the messenger as a substitute for the murderer. But once this immediate danger is over the messenger joins them in mourning, gashing himself until blood flows as a sign of his sympathy with them.

EMBRYONIC COURT

Although self-help of this sort is the basis of legal procedure in Aboriginal Australia, in most areas more or less formal discussions or meetings are held at irregular intervals to settle grievances. The most convenient time for this is when members of different tribes meet for ceremonies. Except for occasional trading trips, these may be virtually the only occasions on which their members come together. Conventionally there should be no fights at ceremonial times. In practice such gatherings do sometimes break up in fighting, but usually after the conclusion of the main rituals. Ideally, however, this is the time to settle inter-tribal affairs.

In other words, agreement on ways and means of maintaining social order is not confined to members of one tribe, or language-unit. It extends to neighbouring tribes as well, or at least to parts of them, especially if they share the same mythology and ritual. But it is considerably weakened by lack of consistent interaction. While the meetings, within the context of ceremony and ritual, are signifi-
cant as providing one means of social control, they are not judicially-based bodies.

Formal gatherings in the nature of law courts with judiciary functions do not exist in Aboriginal Australia: there is no formally constituted court of law, comprising special persons vested with authority to deal with cases, pass judgment, and impose punishment. The immediate demands of self-help, together with a relatively weak political organization, have militated against such a development. Further, sorcery is not the handmaiden of law, since it usurps one of the court's most cherished functions—that of punishment. As Hoebel (1954) points out, 'the Law has teeth'. But sorcery is only one way of achieving retaliation, and may not even be the most important way. And although constituted courts did not exist in traditional Aboriginal Australia, there were councils which did much the same thing, although far more informally and less systematically.

The nearest approach, as far as we can gather from the material available, is found in the councils of the now virtually extinct Lower River Murray people, such as the Jaraldi and Dangani. Taplin, in Woods (1879: 34-5), speaks of leaders or 'landowners', the rupulle, negotiators and spokesmen for the tribe, or patrilineal clan headmen, who may settle disagreements with adjacent tribes, or clans. With the elders, they preside over the tendi, a council or court before which offenders are brought for trial. Women play a prominent part. Taplin gives several examples, which tally with cases one of us (R. M. Berndt) recorded at second hand in that area some years ago. In the example Taplin witnessed, two clans met to settle a dispute: their members sat facing each other, and members of other clans were ranged around their rupulle. The tendi began with a general discussion, with accusers and defendants, and witnesses were called. In Taplin's example no decision was reached, as far as he could tell: whereas in my own cases judgment was passed and punishment meted out.

This rather elaborate system of control seems to have few parallels, although there are suggestions in Howitt of something of the sort in eastern Australia. He speaks (1904: 295-354) of tribal councils, headed by a leader. Among the Wuradjeri a headman can call his people together to consider "the course of action as to murders, abduction of women, adultery, or raids on, or by, other tribes". In the 'Gournditch-mara' tribe the headman settles all quarrels and disputes. Among the Dieri, in contrast to these examples where apparently anyone could be present, special closed meetings are held, attended by heads of local totemic groups, fighting men, native doctors, and elders of some standing. (See also Gason, in Woods, 1879: 265.) Among the matters dealt with are sorcery,
murder, breaches of the moral code, offences against sacred ritual, disclosure of secrets of the tribal council or initiation rituals to the uninitiated. A person judged guilty of a major crime is killed by an armed party (pinya), sent out by the headman.

Such councils of elders or men of importance, or leaders (tribal, clan, local group, ritual), seem to have been, traditionally, fairly common. But generally they are exceedingly informal and while they meet to settle disputes, among other things, they do not try to handle all types of these, nor do they always act in a judiciary capacity. Roth (1897: 139) differentiates between offences dealt with by the council (that is, offences against the unit as a whole) and those which are settled at a personal level. This distinction is not easy to make. Speaking of the Pitta Pitta (Boulia district, Queensland), he says that the camp council “will take upon itself to mete out punishment in crimes of murder, incest”, and indiscriminate use of weapons in the camp itself: in the first two a guilty party is killed, perhaps after being made to dig his own grave, in the last he is crippled with knives. Spencer and Gillen (1938: 15) mention that in meetings called to consider an offence the headmen consult with elders: if the accused is judged guilty, and his crime is a major one, he can expect death: the elders arrange to carry out the sentence by organizing an ininja party. Kaberry (1939: 178-9, 272), speaking for the eastern Kimberleys, says that “the horde and not the tribe [and not the local descent group: see Chapter II] is the political unit”, which is concerned with government and administration. Men make the decisions, but authority is vested in the headman and the elders. The headman arranges the place and time of meetings: “He and the elders conduct the proceedings centring round the ceremonies” and the settlement of disputes: such meetings provide an opportunity for the thrashing out of grievances. But although political control is vested in the headman and in the elders, this must be qualified: apart from serious charges, many matters are the responsibility of the relevant kinship groups.

A different procedure for settling grievances of a minor sort, in north-eastern Arnhem Land, is what is called the bugalub. It resembles the garma mortuary rites described by Warner (1937/58: 412 ff.). Persons of either moiety can set it in motion, when they want to clear up some dispute or disagreement or, in a general sense, restore equanimity or balance. (An Elcho Islander who had been taken to Darwin hospital with a severely injured hand called one of these when he returned home.) People gather around a specially prepared ground in the main camp, outlined with mounds of sand: within it a hole has been dug to represent a sacred water-hole associated with the persons responsible for holding the rite. The songs, to the usual accompaniment of clapping sticks and
didjeridu, are 'outside' versions of 'inside' (secret-sacred) singing, with the same associations. As one after another in that particular series is sung, women jump up from the place where most of them are sitting together, and dance. Finally the persons concerned (more often men, sometimes women) enter the 'waterhole': and there water is poured over them while invocations are called to the mythical beings connected with that site. This ritual washing is said to heal dissension and make for mutual goodwill between the participants. (At Elcho Island early in 1961, six bugalub were held in a matter of two weeks.) The conventional healing of breaches, through contact with the sacred world of myth and ritual, is handled in a way which, apart from the more serious business of the evening, provides popular entertainment and enjoyment for people not directly concerned in it.

The kopara of the Dieri and their neighbours is designed for the same purpose, the settlement of grievances, but because of its economic overtones we have discussed it in Chapter IV.

SETTLEMENT BY ORDEAL

While the tribal council is general in one form or another two other procedures, which can be classified as legal in the broad sense of the term, have to do with the settlement of disputes. The first is typified by the north-eastern and western Arnhem Land magarada or manejag. There is a judicial quality in this, insofar as the major aim is the settlement of a rupture, and all interested parties are represented; but before the holding of this meeting the accused has already been judged guilty, and may even have admitted culpability. Although the magarada is spoken of as a peace-making ceremony it is better styled 'trial by ordeal' or 'settlement by combat' or, as in other instances mentioned by Howitt (1904), 'settlement by duel'. Radcliffe-Brown's view (1952: 215-16) would be that this is simply retaliatory action and not law, that a legal system in the narrow sense has not yet been developed. Hoebel (1954: 309), however, sees in the magarada a trend toward law: he says that "there is no superior restraining power; it all depends on the self-control of each group" involved. Gluckman's (1955) concept of the 'reasonable man' is significant in this argument.

It does seem fairly clear that this procedure of conventionalized retaliation, socially sanctioned, publicly demonstrated, with the aim of settlement (in terms of indemnity), is a legal one, and closely related to a system of law.

As Warner mentions (1937/58: 174-6), a magarada (makarata) is not held straightaway after an offence has taken place, but only after people's rage and resentment have had time to cool. Arrangements are always made by the injured party. The two opposing
groups, painted in white clay, stand just out of spear-throwing reach, with mangrove jungle or scrub behind for protection if necessary. Members of the aggrieved party advance toward the opposite side in a totemic dance, then walk back. The others do the same. Now they are ready for the 'duel'. Men of the accused’s group run irregularly across the ground, and with them run two men who are closely related to both sides. Spears are flung at them—but usually with the stone or iron blades removed. They can dodge, but they must not throw back the spears, or the abuse which accompanies them. This takes the first edge off the injured clan’s anger. After a brief lull, the accused man or men runs across the ground. This time the blades are left in the spears, and flung at him one after another. Elders from both sides try to restrain the participants, warning them to keep their tempers in check. Finally, the accused man’s party dance across to their opponents. If they spear him in the thigh the matter is at an end, and both groups join in dancing. Ideally the thigh wound is enough, but sometimes the accused is killed. Very occasionally, a fight develops from the conflict of opinion at such a ritual settlement: in which case the feud continues until further attempts are made to curtail it through a magarada. If there is no final spearing the case is still open, and further retaliation can be expected.

The magarada has its counterparts in other regions—including the conventional thigh-wounding of the Western Desert. Howitt (1904: 333, 335, 338, 342, 348) gives examples of ordeals. Among the Maryborough (Queensland) people, an accused man has only a shield to defend himself. Among the Buntamurra, the close kin of an injured man “fight and thrash the offender”. With the Kaiabara, a challenge is sent out by the injured party; if it is accepted they presumably meet in much the same way as for the magarada—but without the ritual dancing, which seems to be unique in this context. The Turrbal have “expiatory combats”. The Wotjobaluk settle differences immediately by armed combat, fighting until blood is drawn. Howitt gives a further case in which the aggressors are summoned to appear with their kin before members of the injured man’s group and face their spears. When the two parties come together, the offender’s headman stands between them and tells them not to take unfair advantage of the situation. The offenders, armed only with shields, submit to a shower of spears; as soon as one is wounded the headman tosses “a lighted piece of bark into the air”, and this ends the fight. Another example comes from Merri Creek, near Melbourne; in about 1840, two groups met to settle a killing. The accused, armed with his shield, served as a target for spears and boomerangs until hit in the side by a reed spear. At this the headman ran between the two groups calling on them to stop.
As Howitt puts it, “they had had blood, and all were again friends”. In the Yuin example, the accused man has two shields. If his offence was murder, he must stand alone; if wounding or sorcery, a companion may support him. His relatives stand at one side of the ground, their opponents opposite. The men chosen to throw spears and boomerangs at him face him in a line, and throw their weapons: when they draw blood, that ends the ‘trial by ordeal’.

In another case reported by Howitt the setting was the Tambo River, between Swan Reach and Lake King. Again the two groups were ranged in opposition, and again the accused man was allowed two shields; but he refused to admit guilt. Nevertheless, he had to run the gauntlet of a barrage of boomerangs until one wounded him in the thigh. He flung it back—a breach of convention which could have led to further trouble if women had not “rushed in between the two parties and stopped the fight”.

The Tiwi of Bathurst and Melville Islands have the custom of a duel during a public trial. (Hart and Pilling, 1960: 80-3.) People sit or stand in a ring about an open clearing. The accuser, painted white and armed with spears, stands opposite the defendant, barely painted and holding few weapons, perhaps none. The accuser then states his case, elaborately, with plenty of abuse, biting his beard (a sign of anger all along the north coast), and finally throws his spears; the other dodges them for some time, then permits one to hit him. He must not react by throwing spears back. Basedow (1925: 165, 167, 172) mentions settlement of grievances in an armed duel which continues until one man falls or both are exhausted. Among the Aranda and Dieri there is a dagger duel, the dagger itself made from a long stone flake with a grip or haft of porcupine resin.

But even though these cases do involve settlement, and special rules are observed during the duel, they are not of the same nature as councils where an authority such as a headman is called in to adjudicate.

In the Kimberleys (Kaberry, 1939: 145-7, 149), matters brought up in inter-tribal discussions have already been thoroughly talked over among the parties concerned. In the example she gives, from Violet Valley, members of the two opposing sides faced each other across the specially prepared ‘ring place’, while headmen urged restraint. One man called sorcery accusations against another on the opposite side and ran across brandishing his spear, but after a time came back quietly to his own side. His opponent then did the same, asserting his innocence. Other accusations followed between the two groups, from women as well as men, with much abuse and waving of fighting sticks, and some skirmishing. Finally, the headman of the visiting group called an end to the meeting, and they all
Plate 46 (right): Digging out honey ants, to be placed in the wooden carrying dish in the foreground. At Mount Conner, Central Australia (1940). Photograph: courtesy C. P. Mountford

Plate 47 (below): Woman preparing to mend a dish, while her son tests his toy spear. At Tikatika, Gibson Desert, near the Warburtons (1965). Photograph: courtesy R. Tonkinson
Plate 48: Drinking from a spring near Upson Downs, Musgrave Ranges (1940).
Photograph: courtesy C. P. Mountford

Plate 49: Straightening a spear shaft, at Ernabella (1940).
Photograph: courtesy C. P. Mountford
dispersed to prepare for a ceremony to be held that evening. As Kaberry observes: “Certainly such a settlement lacks the formality of legal proceedings . . . it lacks the embodiment of justice in an official with the power to regulate the marital affairs of individuals of whom he may have no intimate knowledge. . . .” A basic consideration here is that both parties are interested in bringing about a reconciliation. In one sense we can speak here of kin-based legal procedure with the headman acting less as an arbitrator than as a mediator whose business it is to ensure that things do not get out of hand.

**INQUEST**

Another procedure which has a legal quality is the inquest, often held after a death. It will come up again in the chapter on mortuary proceedings, but something needs to be said about it here. Elkin (1954: 283-4, 302-12, 315-16; 1945) discusses it in some detail. The key figure is usually the native doctor, who through divination or other means claims that he can identify the person or group responsible. Not all deaths are followed by inquests, and not all inquests are followed by retaliation.

The procedures vary too. Among the Lower River Murray people the nearest relative sleeps with his head on the corpse so that he will dream of the ‘murderer’. (Taplin, in Woods, 1879: 19-20.) On the following day it is carried on a bier, while he and others surround it and suggest likely names; if the men carrying it feel a movement on its part toward the person who calls one of these names, that is taken as confirmation. Among the Jupagalk, after a man dies the spirit of the ‘murderer’ is sought in the adjacent bush. (Howitt, 1904: 455, *et seq.*) The Wurunjerri, when no native doctor is available, simply sweep the top of the grave clean, find a small hole, and insert a stick which shows by its slant the direction in which they must search. At Port Stephens the corpse is held on the shoulders of two men, while a third strikes it with a green bough calling the names of various suspects; at the correct name it shakes, making the bearers do the same. Among the Chepara the native doctor sees the culprit in a dream. In other tribes the corpse itself is asked who caused its death (for example, the Bigambul), or the doctor makes a track on the cleared ground under the mortuary platform (for example, the Turrbal) and so interprets the identity of the ‘murderer’. With the Wakelbura the earth immediately below the platform is loosened so that the slightest mark will be visible, and examined at intervals. In the eastern and northern Kimberleys, stones are arranged underneath the mortuary platform or tree: when body juices fall on these the doctor can tell from which way the sorcery has come. (Basedow, 1925: 208-9; Kaberry, 1939: 212-
13.) See also Elkin (1954: 305) for the Bad and Ungarinjin. Once guilt has been definitely established, older relatives of the dead person remove the skull or some other bone, paint it with red ochre and blood, bury it in an ant-heap with fire, and sing over it so that the 'murderer' will sicken and die. One way of narrowing the range of responsibility is sometimes used, in the Western Desert, when people come together after an interval in which there have been a number of deaths. Preferably on a dark, still night, small fire-sticks are prepared, one for each dead person, and each stick identified by such points as section or subsection and local affiliation—not by name, since names of the dead are tabu. One after another the sticks are held up in the air: if the sparks fly high and far, someone from another country in that particular direction must be the culprit; but if the sparks fall close by and are soon extinguished, responsibility lies near at hand.

The north-eastern Arnhem Landers say that the 'murderer's' spirit always hovers near the corpse, and a native doctor can easily identify it. (Warner, 1937/58: 196.) Here, too, juices falling from the mortuary platform are used in divination. Or the native doctor watches a stick on which he has put one of the dead person’s arm-bands or some of his hair, ready to hit it suddenly with a 'spirit bag' and catch, or at least identify, the 'murderer's' spirit as it jumps from the stick. (Warner, 1937/58: 211.) Spencer and Gillen (1938: 476) say that a dying man may whisper his 'murderer's' name to a native doctor, or this information may be inferred in a general way by examining the grave. In the Western Desert, several months after burial the bones are exhumed and scrutinized for the same purpose. At Laverton, specifically, a corpse may be examined for signs of magical choking, and a native doctor knows from the smell where, roughly, to find the 'murderer'. (Elkin, 1954: 304.) In other cases there is post-mortem examination of internal organs; Elkin discusses some of them.

Inquest proceedings, simple or elaborate, immediate or delayed, are only the first of a series of steps which must be taken if revenge is to be sought. They establish a form of balance by providing an explanation of events, giving the persons most closely associated with a dead man or woman an opportunity to weigh the situation and decide whether they want to carry matters further.

Procedures for settling major differences or identifying sorcerers are of a fairly conventionalized or formalized kind. But side by side with them, or leading up to them, there may be a great deal of informal discussion, with men and women voicing their views openly and noisily in the main camp. If an offence has just been committed and feeling is running high, words may lead to blows, and fighting may break out in earnest. Otherwise talk and argument
may go on at intervals for weeks, or even longer. Older men and women usually have a controlling say, in the long run. But angry people are in no humour to look at both sides of an issue, especially to begin with. If a man has a burning grievance against another, he directs public harangue particularly against his antagonist—who may respond in kind, or simply sit with averted face and downcast eyes ignoring him. The rest of the camp will probably go on with its ordinary activities, ostensibly taking no notice, but actually absorbing most of what is said. Even if they do not openly take sides, the incident will supply them with a source of conversation for days and perhaps weeks to come. A good argument, particularly one without too much bloodshed, is the equivalent of a stimulating evening’s entertainment.

The north-eastern and north-central Arnhem Landers make full use of the dramatic potentialities here. A man with a grudge may paint himself in ochres and carry a bundle of spears, one fitted ready into the spearthrower to show that, if necessary, he is prepared to back up his claims with force. His supporters, and the defendant and his supporters, may be armed too. Long verbal battles between them, with detailed monologues full of mythical allusions, may go on for night after night, or at intervals over long periods, until the matter is settled in one way or another (through compromise, or bloodshed), or merely drifts off to be resumed later. A man who is violently enraged, and wants to do something more than talk, has a conventional way of asserting himself and frightening or at least startling his opponent at the same time. This is the maragaridj or mari (meaning anger, or angry). He may engage in some preliminary threats or boasting about what he is going to do, working himself into a state of near-frenzy. When the moment is ripe he snatches up his weapons, rattling a spear in the thrower at arm’s length above his head, and runs at full speed toward his opponent, shouting and cursing him: and behind him, making a formal show of restraining him, runs an old woman—a close female relative, such as a father’s sister. If he has chosen his setting well, he can approach his victim across a wide clearing with nothing to stop his charge or interfere with the drama of his attack: but he does not always spear to kill. Even though in such cases a man’s eyes look glazed and unseeing, and his shouts are hoarse and almost mechanical, he may exercise enough self-control to fling his spear within a couple of inches of his victim—a gesture, not designed even to wound. There may not be enough time for anyone to attempt to check him. Or his antagonist may respond by paying no attention to him at all, simply continuing with what he was doing before—as old Wonggu once did, calmly singing and clapping his sticks at a late afternoon
mortuary rite while a Groote Eylandt man with a grudge came running directly at him to fling his shovel-nosed spears.

FEUD AND WARFARE

Law and war are two sides of the same coin. Warfare is armed conflict carried out by members of one social unit (a tribe or clan, for example), or in the name of that unit, against another. Feud, however, is armed conflict which concerns particular families or groups of kin, although it may have repercussions throughout the community and implicate a large number of persons: feud can drift into warfare. Most of Howitt's examples relate to armed combat and duelling, but he also points out (1904: 348, 352-54) that a blood feud can spread and involve the whole tribe. In western and eastern Arnhem Land too some feuds can be traced back over a number of years, with a balance between killings never quite achieved, and all attempts at peacemaking proving ineffective.

Basedow (1925: 183-9) divides warfare in Aboriginal Australia into two categories: inter-tribal fighting and intra-tribal (or inter-clan) feuding. In early days, he says, inter-tribal fighting was fairly common. This is open to dispute, although there are several outstanding instances. (Howitt mentions some, and so do other early writers.) More general, however, are armed expeditions, socially sanctioned, which set out for a definite purpose, such as to avenge the death of a fellow tribesman or clansman or punish an offender. Howitt (1904: 326-30) and Gason (in Woods, 1879: 263-5) describe the Dieri pinya, an armed party. It will be recalled that when a person is condemned to death by a special council the headman arranges for a pinya to deal with him. Men chosen for this wear a white band round the head, beard tipped with human hair, and diagonal red and white stripes across breast and stomach. They go to the accused man's camp and ask for him. The people there answer at once, because they are afraid; they know the reason for this visit. Members of the pinya seize his hand, announce his sentence and lead him aside, where one of them strikes him dead with a large boomerang. (Howitt mentions the case of an accused man pointing to his elder brother to take the blame, because an elder brother stands for and should, ideally, protect a younger.) In other examples the procedure of killing differs, and sorcery may be involved in place of direct violence.

The Aranda avenging party, atninga, follows a quarrel between two groups—usually about a woman, or a death ascribed to sorcery. (Spencer and Gillen, 1958: 489-96.) Typically, say Spencer and Gillen, the attackers enter their opponents' camp fully armed, but fight with words, not weapons; after a time things quieten down, and the affair subsides. But occasionally they come to blows. Or
the atninga wait in hiding to spear their victims. In one case the
atninga men were hopefully offered women in the ordinary way,
but rejected them—a sign of their hostile intentions. But after dis-
cussions had gone on for a couple of days or so they reached an
agreement: in return for the death of three men (two had married
wrongly, a third had boasted of killing members of the atninga's
tribe), the local men would not only go unharmed but would
even help the killers. Accordingly, two of the men were speared
through trickery; the third, suspicious, had escaped the night before.
After that, the avengers danced around the bodies while the others
watched passively. This example contains a number of details, such
as a special term (immirinja) for the actual killers, as contrasted
with the decoys (alknaralinika). And the avengers later made an
excited ritual entry into their home camp, greeted by old women
dancing and wielding fighting clubs.

Sending women over to the camp of visitors whose intentions are
doubtful is fairly common. Ostensibly this is a friendly gesture, to
appease an enemy. But now and then it is designed to put the
visitors off guard and leave them vulnerable to attack. Members
of a revenge expedition may capture wives and daughters and
sometimes young sons of the men they kill. Howitt (1904) mentions
a number of instances. The Geawegal (on the Hunter River) keep
captured women who belong to the correct intermarrying classes.
Other examples come from the Maryborough region (Queensland),
south-east South Australia, south-western Victoria, on the Yorke
Peninsula and in Gippsland, among other areas. The issues have
often been confused here, and it is likely that many of the cases
cited can be classified as marriage by capture: that is, a party of
men going out specifically to obtain a woman, in contrast to a
party which is bent on revenge and carries off its victims' widows
almost as a side-issue.

In the Western Desert, a wanmala expedition may be sent out
for much the same reasons as the atninga—particularly to avenge a
sorcery death, or track down and kill a runaway wife and her lover.
Several men, summoned by a native doctor or sorcerer, go into the
nearby bush to paint themselves and prepare their special wibia
shoes. When they are ready there is a short ceremony in the main
camp: women sit beating time for them while they brandish and
rattle their spears. Then they leave, flinging spears as they go. They
hold other ceremonies, too, foreshadowing the fight which will
take place when they reach their victim's camp. And they sing
songs sponsored by the mythical Wadi Banbanbalala, Bell Bird
Man, who 'makes wanmala'; in everyday life, people who hear a
bell bird calling may say uneasily that a wanmala must be nearby.
During the wanmala journey the elders carry bundles of spears.
In conventional accounts, they reach the victim's camp, enter it stealthily and take him by surprise, encircling him. Then, holding their spears poised ready to kill him at the final word, the older men sing:

\[\text{guna majula ranggarnggalu mangani gudjaludjalu} \]
\[\text{baramaja majula laurula bundila wedjawedja} \]
\[\text{dudururu guna majula . . .} \]
Faece! Sing, laugh, he's the one we're going to spear. Sing, sing! Let all our spears go flying, spinning. Faece! Sing!

Among the Tiwi of Bathurst and Melville Islands, if duels fail to resolve a dispute, the result may be a full-scale fight between two armed groups of men. (Hart and Pilling, 1960: 83-7.)

But the most highly organized warfare in Aboriginal Australia is found in north-eastern and north-central Arnhem Land. (See Warner, 1937/1958: 155-90.) The war-making unit here is the clan or the linguistic unit and the immediate source of the trouble, generally, an inter-clan killing or a woman. An interesting point, supported by our own material, is that most fighting takes place between neighbouring clans of the same moiety. As Warner suggests, "Feuds between clans of opposite moieties are more likely to die out for lack of the stimulus provided by competition for women. Such clans are likely to allow a magarada to be held . . . ." He adds: "Kinship solidarity extends warfare but also has the opposite tendency: that of limiting its scope when it has reached very large proportions. All the clans are interrelated, and generally many will find their loyalties divided. . . ." The immediate aim of most fighting in this region is that the 'enemy' should be made to suffer the same injury that it has inflicted—that is, compensation in like terms.

At least six types of armed attack are recognized, and named. They are listed by Warner. Not all can be termed warfare. The magarada, for instance, is primarily settlement by ordeal even though it may bring, not peace, but further fighting. 'Nirimaoi julngu', camp fights, hinging on adultery accusations, involve loud talking rather than serious injury or death. In narub or djawald a victim is killed or wounded in his sleep. Whatever personal grievance prompted the attack, responsibility for it is ascribed to the clan as a whole—even though the men concerned do not worry about obtaining even informal sanction for it beforehand. Miringu (or maringo, death adder, as Warner calls it) is much closer to warfare in the usual sense of the word. The reason is usually an inter-clan killing. To begin with, members of a miringu party perform magical rites, such as going through the motions of finding and spearing an image of their victim, drawn on the ground or moulded
from clay and identified by name. They use a bone, from the dead man they plan to avenge, to tell them which direction they should take, then set off in snake-like formation to the victim's camp, surrounding it in a traditionally prescribed way before killing him, and perhaps others as well. This miringu is comparable to the Desert wanmala, the Dieri pinya, and Aranda atninga.

Two other types of fighting in north-eastern Arnhem Land are the milwerangel and the gaingar. The first is prearranged, and involves a number of clans. The gaingar, on a larger scale and on a regional basis, is very rare indeed, the outcome of intense anger and upset built up through long feuding—and conventionally intended (says Warner) to be 'a spear fight to end spear fights' and so bring peace to all the people of that area. This too is preceded by magical rites, with specially decorated spears, symbolizing each moiety, which are later sent out as an invitation and a challenge. Any kind of ruse is permissible in this fighting, and the number of deaths expected from it is higher than in any other variety—although still not much more than a dozen or so at a time.

MAINTENANCE OF ORDER

Measures for the maintenance of law and order, for reinforcing social solidarity and cohesion, are nearly always on a local basis. Sanctions employed by a clan, a tribe, or a linguistic group, may have no force outside it, except where several of these are linked in acknowledgment of a common culture pattern or close trading alliance, or consciously share a common sacred and ceremonial bond. Where no such associations are recognized, and there is no linguistic similarity, a stranger would have no effective ritual status. Even if he were assigned a place in the kinship organization he would be attached to it only by very tenuous ties: his adopted relatives would be less ready to defend his rights than those of people more closely connected with them.

To repeat, then, the maintenance of order in pre-contact times, and in the very few areas that are relatively little affected by contact, has had only local and restricted application. Authority is limited, and qualified by claims of kinship which override more impartial considerations of social welfare. 'Justice' is dependent on these factors. The first response to an injury is the desire to retaliate in kind, to hit back in terms of self-help. But other issues intervene: why was that particular person injured or killed, and in what circumstances? Who was he and who are his kin? Who are the other interested parties? Who is the aggressor (or aggressors), who are his kin, and what were his reasons for doing this? As soon as these questions are asked, it becomes necessary to discuss the matter with others: 'Under such conditions what shall we do, how may we avenge this
injury, this slight, this death?' But when such questions are raised, with attention to precedent, to what has been done in other similar cases, we have the basis of law and regulation. In all Aboriginal societies there are certain approved mechanisms—the council, the meeting, the magarada or ordeal, armed combat and the duel, and the inquest—whereby infraction may be resolved. None of them, however, is wholly satisfactory, because the authority system is not usually strong enough to impose its own penalties—although there are indications that it was, actually, much stronger than is sometimes thought.

Despite the overriding importance of kinship there is enough evidence available to speak of authority (even if it is weak) and of government (in so far as law and order are maintained within limits). The element of self-help is much more apparent here, the absence of central authority more marked, than in many other societies. Weak or strong as the case may be, this is politics. (See Chapter II; also R. Berndt, 1959a: 103-4.) Sharp (1958: 1-8) refers to the Yir-yoront as ‘people without politics'. ‘There are,' he observes, 'roles, and rules for the roles, and a system of law with specified kin serving as public agents with authority to act in defined circumstances, and provision for changes in the roles and rules through public action or inaction. But all this is simply kinship. . . .' Hiatt (1959: 186-7) says more or less the same thing. Of course, this is indisputable: kinship is significant in Aboriginal Australia, in this sphere as in others. But it is like saying (for example) that there is no religion, no magic, no economics, only kinship. To take this extreme stand is to ignore, on the one hand (although Sharp did not), the fact that people are categorized in units the members of which are interdependent, and that relations both within and between those units may not be framed only, or predominantly, in kinship terms; and on the other hand both the content of actions, and the ways in which kin relationships are used.

Howitt (1904: Chapter VI) was possibly the first writer on the Australian Aborigines to emphasize the importance of law and order and tribal government, although a number of earlier writers had considered the question for specific areas. Hoebel (1954: 301-9, in his chapter on ‘The Trend of the Law') admits that ‘rudimentary law-ways' are there, but takes the view that ‘they are almost inchoate', that the line between private and criminal offences is hazy, and that the Aborigines tend to respond to legal action with physical aggression. To some extent this is true; but much retaliation in Aboriginal Australia is at the level of magic or sorcery and, as we have seen, the sanctions involved are not wholly physical. There seems to be a general tendency to resolve serious ruptures without extending them. Although retaliation is the essence of law,
the controls operate in such a way as to restrict regional spread and limit the number of killings. In this context kinship is a mitigating influence but also, even more, a resolving influence. Not all wrongs committed against property, person, or social units are countered, or resolved, by immediate action of a 'legal' sort. There is not only variation in response to the same offence. How active, or how passive, that response is depends on circumstances, on factors which go beyond the persons immediately involved.

In general terms, it is not the range of criminal and other acts which is significant in considering the whole question of law in this context. The range is relatively narrow in Aboriginal Australia. Women, revenge for death or injury, breaches of sacred laws and marriage rules, and a few other points of minor importance, constitute virtually the total subject matter of legal procedure. This is far more limited than in some societies where property and material objects are more obviously significant. Where these are present in great quantities, they are potentially the subject of legal action to guard the rights of their possessors. This may mean an elaboration of legal procedure; but it is not, as we can see in measuring it against the position in Aboriginal Australia, necessarily relevant to the development of law in a chronological sense. The real test of law should rest on consideration of how an infringement or breach, of whatever nature, is resolved on an equitable basis, within the cultural perspective. Do the persons involved consider such and such a fair settlement? Are they satisfied? Do they feel that compensation, in goods or in physical or magical retaliation, is adequate and fulfils their expectations sufficiently to heal the breach? What loopholes are left for further action? These questions are of some importance in considering the rule of law and the maintenance of order in any society. When we ask them against the background of evidence from Aboriginal Australia, it is not hard to see that there is plenty of what we can call legal procedure and even judicial action, but that law itself is weak. There are too many loopholes which provide opportunity for feud to develop.

Traditional custom is a powerful factor, but personal decision within that framework is often an overriding influence which cuts across other personal decisions, other interests. Also, the fact that religion is one of the major emphases in Aboriginal life, and that it supports the quasi-gerontocratic system of authority, does not mean that everything else is entirely subordinated to it. The religious system depends for its continued existence principally on male recruits, but it is supported by the community as a whole. It rests, for the most part, on consensus and not on force. Outside of religious matters, the headman, elders, ritual leaders, native doctors, sorcerers, and so on, must depend on ordinary members of the society to up-
hold their judgment and decisions or advice. They cannot always, constitutionally, enforce their opinions, and are indeed themselves handicapped by ties of kinship and clanship, and quite often by conflicting loyalties.

In all the cases we have outlined, while there is so much verbal emphasis on revenge, it is plausible to infer that underlying this is the more general aim of achieving order, or balance. An injury is done, the status quo is upset: retaliation provides a means whereby this may be restored. In other words, peace should follow the application of law. But if this fails and dissension continues—if, for instance, a feud cannot be resolved—then we have a state of war, or potential war. Warfare in the broader sense is infrequent in Aboriginal Australia, and most examples which have been classified as such are often no more than feud. Feud, however, is an extension of law—it is one attempt to resolve divergent or conflicting interests. Members of a wanmala, pinya, atninga, and so on, may specifically set out to achieve settlement, to punish an offender, real or supposed; but their right to punish may not be acknowledged, and the consequence may be retaliatory action of the same kind. Nevertheless, because a wanmala does not always succeed in its aim, and in fact exacerbates the situation, this does not invalidate its significance as a legal mechanism. Feud can turn to warfare; and here again, as in the idealized claims for the north-eastern Arnhem Land gaingar, the aim is to achieve peace, through the settlement of differences.