WATCH OUT for the native

Daniel Nina

A comparison between non-state forms of justice in (black) Australia and South Africa.

In contradictory terms, Paul Hogan makes an important contribution to the debate of 'native vis a vis settlers' in his film *Crocodile Dundee II.* He shows us an important understanding of the culture, behaviour and practices of Aboriginal people in Australia — 'how they are', 'how they react', in fact, 'their traditions'. His aim is the same as many others — to interpret how the Aboriginal people feel and act. Paul Hogan in a way, re-creates the 'native'.

This article analyses the act of representation of the native, the 'other'. Why do they need to be represented, interpreted? Probably they have no 'voice' to speak by themselves — they need an interpreter, someone who can tell the outside world how they do it, how they are.

It is here, at least for me, that the 'ugly face' of Paul Hogan emerges: he is definitely a smooth operator, of kind manners and slow pace, assertive and swift in his actions. But he is also part of another experience — he is part of an unfinished project: the 'civilising mission' of the 'native'.[1] All native traditions need to be filtered through Paul Hogan in order to be good, in order to be Westernised, in order to be — in fact — civilised.

My purpose is not to talk about films and actors, but about non-state forms of justice in a comparative way, between two countries whose basic commonality lies with the British Empire, a history of settlers' colonisation, migration of population across oceans, and fundamentally the exclusion of native/indigenous population by the mainstream society for many years after colonisation began. The need to discuss these diverse societies lies, at least within my line of thought, with exploring the other side of the debate — not only how the 'other' is being colonised, but how the 'other' colonised the mainstream signifier.

The object of the study has to be reduced to analysing existing forms of 'justice' within black communities in Australia and South Africa, and which way these forms of 'justice' are appropriated by the state. It is a continuous interaction between state hegemony and non-state hegemony in the area of justice. (Note: I am using the name 'black' in a South African tradition, as a collective denominator for all people who are not of European descent. In the Australian context, I incorporate the same racial denominator to include the Aboriginal and Torres Strait Islander people.)

Questions need to be asked: Why the interaction between different forms of justice? Who, in the final instance, controls those interactions? What happens with those instances of non-state justice that are not interpreted and incorporated to the state? Do they disappear?

I would like to begin a new exploration, a comparative one, between two communities whose mechanisms of conflict resolution have been integrated with those of the state. How has this happened? Who has brought it about? In what way, if any, has the logic of Paul Hogan been applied to non-state forms of justice? How does its incorporation (by the state) resemble the values of mainstream society?

Daniel Nina is the Academic Manager of the Community Peace Foundation, affiliated to the University of the Western Cape, South Africa.

This article is an enhanced version of a paper presented at a seminar at the School of Law, Macquarie University, in October 1996, whilst the author was a visiting scholar there, under the auspices of a Macquarie University Research Grant.

I begin my story from what seems to be a relative crisis, at least within those circles that analyse the transformation of the state and its sovereignty. Then I will explore non-state forms of justice in Australia and South Africa, and focus on an emerging process of 'indigenising' the state. Lastly I will provide some observations about the socio-legal implications for Australia and South Africa.

The end of Enlightenment?

It seems as if we are going through the end of an era. Some have claimed that it is the end of 'history', as Francis Fukuyama did a few years ago. Other more progressive writers, like Eric Hobsbawn, have a more complicated and, in a way, catastrophic view:

> Under these circumstances of social and political disintegration, we should expect a decline in civility in any case, and a growth in barbarism. And yet what has made things worse, what will undoubtedly make them worse in future, is that steady dismantling of the defences which the civilisation of Enlightenment had erected against barbarism, and which I have tried to sketch in this lecture.[2]

What I found interesting at least in the literature on criminology and the state, is the fact that for many writers we are going through the worst era, where everything has been dealt with before, and where it seems as if, to paraphrase the old Marx, 'everything that is solid melts into air'. Scholars like Stanley Cohen, Nicolas Rose, Jean Marie Guehenno, and others, illustrate in their more contemporary writings, that there are serious transformations taking place at the level of the nation-state as the main organiser of the project of modernity.[3]

But thinking of Hobsbawn, I need to think in a way, of the end of a particular aspect of the Enlightenment movement, and attempt to assess this process through the emergence of what Foucault called, 'subjugated knowleges'. The transformation at the state level, and the continuous expansion of the process of globalisation where the state has begun a process of decentralisation and deregulation, creates contrasting and conflicting scenarios which have an effect on the way in which we have been 'ruled', at least in the Western Anglo-Saxon world, since the Second World War. When discussing the state and its transformation it is important to make a clear distinction between the state in Anglo-Saxon traditions (Canada, United Kingdom, Australia and New Zealand) and the state in other types of cultural traditions. In particular, one has to be cautious of scholarly discourse which attempts to establish generalisations across the world, when the experiences have been quite different in many countries. For example, the discourse on the transformation of the state between the United Kingdom and Kenya is not the same, and cannot be simplistically presented as such.[4]

In the particular field of the area of governance (including issues of justice) there has been a serious attempt in the last decade or so, to launch a process of devolution to the 'community', as a way of re-organising the social imaginary (to paraphrase Baudrillard via the work of Nicolas Rose). The re-birth of the 'community' is partially linked with serious state attempts to re-define its logic of rule and control — by delegating back to the 'community', the state emerges as a facilitator of development and social transformation instead of the initiator of these type of processes. The 'community' in this regard emerges as a conduit for a new and different type of social regulation and ordering. The emergence of the community as the new social imaginary, where development and transformation is to happen, through processes of grass-roots empowerment and control, has led to the emergence of concepts such as: community policing, community justice, community art centres, community development, and many more.[5]

The art of governance, re-thinking Foucault's project on governmentality, which was very much part of the Enlightenment movement — as least within Hobsbawn's intellectual preoccupations — is changing in a rapid way. The state decentralises and deregulates itself, but it learns to re-configure itself in new forms that incorporate aspects of the traditional forms, for example, the use of local government. Part of this process, as a way of extending and re-organising state rule, is the incorporation of forms of governance which are traditionally linked to the 'other'.[6]

I attribute the emergence of the 'other' to circumstances in which aspects of the Enlightenment movement have collapsed or have been seriously challenged. Words such as 'indigenous', 'traditional' and 'native' re-emerge in order to pursue a new project of governance, which has the state as one component, but in which different sectors of the 'community' have to be included so that an effective process of regulation takes place — no longer controlled by the government, but exercised by individuals and different sectors of civil society or traditional society. In Africa, for example, in certain societies in (democratic) transition, areas of traditional society/culture have been re-invented by the state in order to diversify the sources of governance. This has been the case in Uganda, where traditional authorities have been re-created by the democratic government in order to assist it in the development and transformation of the country.

The experience of the re-birth of the 'community' and the 'native' in the Australian and South African context, opens the possibility of new and interesting explorations, in particular, because the process of rationality and regulation — by-products of the Enlightenment era — do not disappear. The re-emergence of the 'indigenous' or 'native' experience is conquered or hegemonised by the state as representative of a dominant paradigm of Western origin. There is opportunity for development of a different paradigm, although this is a process still at an embryonic stage.

O'Malley captures this idea quite clearly:

> But this indicates very clearly that the processes of resistance are carried into the subjugating programme of rule along with the appropriated forms. Resistance inscribes its presence, then, not only by providing particular forms which are then unproblematically deployed to intensify government. The existence of indigenous forms within the subjugating regime provides sites within rule for the operation of counter-discourses and subordinated knowleges.[7]

It is at this level, that I locate the discussion of non-state forms of justice of (black) Australia and South Africa. In particular, I will explore the reasons behind the re-emergence of the 'indigenous' and 'native' concept of justice in both Australia and South Africa.

As I will discuss later, South Africa since 1994 has experienced a process in which at one level of state discourse, there has been a serious attempt to popularise and Africanise the judicial system of the country — in other words, to make it more 'indigenous', representative of the vast sector of the population which is of African descent.

The implications of this re-emergence affect the nature and authority of state sovereignty in contradictory ways. In particular, it is a process that encourages the emergence of limited sovereign powers controlled by the community, by

the 'native', but supervised and monitored by the state — a shift from state to civil society.

I also explore a second tier of this process of 'indigenising' governance, at least within the area of justice. It is a line of inquiry which does not limit itself to exploring the impact of the incorporation by the state of non state-forms of justice. It explores, following O'Malley's quotation above, the subversive element which the encouragement of 'indigenising' state justice has for the 'native'.

What becomes for me important, is the element of subversion, of sabotage, of aspects of the Enlightenment movement which the promotion of 'subjugated knowledges' has. In a way, this second exploration lies with what happens with the 'native' when certain traditional forms of its justice are accepted by the state, and on some occasions, widely encouraged. On the other hand, what happens to those other forms of 'native' justice not sanctioned by the state that are rejected by the state? It is here, in this dialectical relation of incorporation and rejection that (black) Australia and South Africa have interesting similarities and also differences. .

Who is the 'other'? — (black) Australia and South Africa

There is probably a vision of 'mainstream' Australia, against which those who do not fit are aligned as the 'other'. Probably the current debate on race in Australia, allows us to ask who are 'those who do not conform with the dominant view of who we are'. I am referring here to the debate sparked by the opening speech in Parliament of the independent member, Ms Pauline Hanson, in September 1996, and its aftermath. I interpret Ms Hanson's speech to be about 'who' we are, and who 'they' are. The 'other' is most of the time constructed by those who define themselves as the main signifier.

Aboriginal and Torres Strait Islander people are the 'other' for two different reasons: first, on the construction made of them by mainstream Australia — by colonial Australia and by post-colonial Australia. But, second, the Aboriginal and Torres Strait Islander people also construct their own identity — as the 'other', whose 'country' has been in existence for over 40,000 years, and which has been invaded in the past 200 years or so by the 'other'.[8]

With a population of 300,000, this 'other' is classified as 'traditional', 'country/rural' and 'urbanised' — all different categories to symbolise a person who claims to be Aboriginal. However, what emerges as the dominant perception of what is Aboriginal, is linked to the notion of 'traditional' Aboriginal ways of living, and not with contemporary and urban ways of living. In a way, the dominant construction of the Aboriginal is that of the boomerang, the traditional dancing and the dot paintings.

South Africa, has a different picture of the 'significant other'. With a total population of approximately 40 million people — roughly 30 million are of African descent and five million or so of European descent — the construction of the 'other' has to be different to the experience of Australia. Until 1994, the state, and components of civil society, fundamentally represented a partial 'picture' of South Africa — that of white South Africa and its culture.

The transformation of South Africa's national identity is quite a complex process in which the new state is pursuing a multi-faceted process of national reconciliation and nation building. This process, not without contradictions, is encouraging the emergence of a new collective identity, which portrays a multicultural society, and which encourages the emergence of those 'subjugated knowledges' and cultures that apartheid censored in the past.

One area in which (Black) Australia and South Africa coincide is their experience with state justice and state regulatory institutions such as the police. The lack of satisfaction and understanding that the core of both populations find in the state institutions of justice and social ordering has been extensively documented and reported.

Out of these reports and many public discussions, there have been state reforms or state initiatives to regulate the 'other'. Aboriginal Courts in Australia and Traditional/Tribal Courts in South Africa, epitomise this process. There has been an attempt by the state to regulate what is roughly called customary law — both in Australia and South Africa. However, there has been a different process of re-inventing the 'other' within the mainstream component of the state.

In the dispensation of justice and access to justice within the current transformation that the (Western) state is experiencing is an interesting process of adoption of indigenous practices. However, this process occurs within the logic of the state.

Indigenisation of state justice?

It is interesting that in both Australia and South Africa their fundamentally European systems of justice have begun a process of 'indigenisation' — a process which in a way looks like a challenge to the Enlightenment movement, and, rethinking O'Malley's ideas, a process which re-creates the state by adopting different sources for exercising governance. Some of the reasons behind the emergence of this process have been discussed. There are other reasons, which are also related to the inadequacy of the judicial system of the state to deal with the 'other', which had forced the state to transform itself. The experience of the 'other' with the state justice system, has been characterised as one in which cultural and identity considerations pose a problem for effective dispensation of fair justice. In both South Africa and Australia, it has been argued that state justice is alien to the culture of the 'other', where language, different visions of how to solve conflicts outside the state domain, and complexity of the legal procedures, create an environment of alienation between the 'other' and state justice.[9]

The question is not 'is there more or less traditional state justice?' Rather, state justice expands by means of regulation, sanction, or implementation of indigenous practices of conflict resolution. It just re-configures its logic or rule.

In Australia we have multiple examples in recent times:

- community justice groups for Aboriginal people,
- community justice centres for urban populations,
- community accountability (family) conferences as a diversion program for juvenile offenders.

The experience of these mechanisms of conflict resolution, drawing their principle from non-state forms of justice, has been documented by others.[10] What is interesting, is the fact that the 'other' way of doing conflict resolution becomes part of the state, and in that regard, a process of indigenisation starts. The spirit of non-state forms of justice of non-Western origin are formally incorporated by the state, where reconciliation rather than adjudication, is the dominant rationale.

However, it is a process that adopts the practices of the 'other' for different reasons related to the discussion above. It

does not represent the end of the state, but rather its re-configuration to a new level of control and of exercising authority in the dispensation of justice and conflict resolution. This process also begins to transform the nature of state justice. In fact it becomes more indigenous, more representative.

The problem with this process of 'indigenising' in Australia, seems to be that it narrows the existence of the 'other' way of solving conflict through the process established and controlled by the state. What happens outside state regulation, and documenting the experience of the process of 'indigenising' the state justice, seem not to be within the interest of those doing research, at least not at this stage.[11]

On the other hand, in pre-democratic South Africa, the apartheid regime began a process in the early 1980s of making the judicial system more popularly oriented by way of incorporating certain 'indigenous' practices. It established the *Small Claim Courts* in 1983, and adopted the *Lay Assessors* scheme for magistrates and the *Short Process Court and Mediation for Certain Matters*, both in the early 1990s.

This process of 'indigenising' apartheid's justice system was linked to a strategy of the regime of controlling the insubordination of the 'other'. In the particular period of the 1980s, a people's revolt against apartheid was conducted, which had — in the particular urban context of township residential communities — the effect of making the communities 'ungovernable'. In many communities throughout the 1980s, the political motto was that of 'organising people's power', which led to the establishment of the (in)famous 'people's courts'. The experience of popular justice is a rich one in (urban) black South Africa. In addition to the people's courts, it includes street committees, disciplinary committees, anti-crime committees and people's forums. In particular, the regime's response and reaction aimed to challenge the urban form of justice, located within the black residential areas, that is, the townships. The people's courts, were one amongst many different expressions of popular justice that developed in South Africa within a political project in the 1980s.

In post-regime South Africa, the process of 'indigenising' state justice is moving at a rapid pace. At the moment there is a serious process in progress, for establishing community courts, religious courts and for re-launching traditional courts, all models based on indigenous practices. In addition, the concept of popular participation mooted through the lay assessors, is now being considered for use at the level of the Supreme Court.

In both South Africa and Australia the state in the field of justice is 'indigenising' itself. The examples discussed indicate that where traditional state-controlled justice is concerned, these two countries show a new pattern which by appropriating from the 'indigenous', breaks away from a Western concept based on the Enlightenment movement, where reason and regulation were the main motive for organising and regulating the social imaginary.

What will need to be assessed, is what happens in these new locations of state 'indigenous' practices of dispensing justice — what is the nature of the emerging limited sovereign power? For example, in the community justice groups of Aboriginal Australia is the logic in operation that of the state-sanctioned process or an alternative one?

South Africa offers a similar scenario to Australia of the unknown in relation to what happens in those areas where the state 'indigenous' justice re-creates the native. The current discussion in South Africa about establishing the so-called community courts is a good example. The democratic government of South Africa needs to re-create 'community' practices of conflict resolution, which have their origin in the 1980s people's revolt. The process of re-creating them is now incorporated within the logic of the state and it will take a while before its impact in developing a 'community' sovereign power can be assessed.

Unlike Australia, in South Africa it has been more clearly documented that the existence of non-state forms of justice are operating outside the legality of the state and its sovereignty. Forms of popular justice, are still being conducted in South Africa in a dialectical relation with the state of co-operation and resistance; and, although the state would like to incorporate these forms via the community courts, the experience so far demonstrates that there will be forms of justice in South Africa operating outside the state sovereignty, with a great deal of contestation and of support on different occasions.[12]

Socio-legal implications

Interestingly, both countries need socio-legal analysis of some common aspects, in particular, of the impact of the continuous interaction between state and non-state forms of justice. I identify four areas in need of analysis.

1. Who represents what? What is indigenous? These are for me the most interesting questions that comparative research between Australia and South Africa provides: what is really 'indigenous'? The process of 'indigenising' the state is a complex one, which has at least a dual feature: on the one hand, the state response for 'indigenising' itself, amongst other reasons, resembles the practices of those 'subjugated' populations which now need to be incorporated into the art of governing; on the other, it is a process which is motivated by the need to develop new state-controlled, although less regulated processes of rule to exercise a more effective governance.

I challenge the notion that the practices incorporated are truly 'indigenous'. They represent state appropriations of indigenous practices, which in order to be adequately used by the state need to be 'cleaned'; they need to be — following Paul Hogan's tradition — civilised.

The best example of this process of 'indigenising' the state, but in a controlled, clean and civilised way, is through the so-called Family Conference Group, or Accountability Conference, led by the New South Wales Police Service. This is a diversion program for juvenile offenders inspired by a Maori tradition. The process of 'indigenising' the state occurs, but controlled and sanctioned by the state itself. It is interesting, for example, that the presiding officer at this conference, a process where a 'community of care' of the offender and the victim is created in order to heal and rectify the wrong done, is a member of the police force.

The process of 'indigenising' is partially inspired, in certain instances, by indigenous practices of the 'native', but when put into practice, it resembles a different process.

2. The depoliticisation of the political in the 'indigenous' tradition. Unlike Australia, the 'indigenous' in South Africa has been determined in the past decade or so, by a strong process of politicisation and contestation of the state. Popular justice in South Africa, has been part of a political process in a more distinctive way than what has occurred in Australia — amongst other things aiming towards social justice.

In South Africa, this process was seen in the past as a challenge to the oppressive nature of the apartheid regime, but it was also linked to the idea of the cultural values and traditions of an African social imaginary — of collective

decision making and participation. In this sense, the political nature of the project in South Africa was dual: a challenge to the state and a reaffirmation of cultural traditions.

In contradictory terms, when the state in South Africa begins a process of 'indigenising', it depoliticises the political aspect of certain non-state forms of justice, in particular the popular justice one. But it does so, at the expense of re-inventing the cultural element — the need for 'Africanising' the judiciary.

In Australia, this will have to be examined in the future. The tendency, has been for the implementation of a more Aboriginal 'friendly' system of justice (for example, as recommended by the Royal Commission into Aboriginal Deaths in Custody). The political component of Aboriginal traditions in the field of justice — their interaction with the state system of justice in a dialectical and conflictive/tense relation, needs to be explored.

3. The emergence of controlled and sanctioned 'sovereignties' inside the state is something to take notice of in Australia and South Africa. The development of the autonomy of those 'sovereignties', through the re-creation of the 'community', needs serious examination and study in both countries.

It is interesting that the emergence of the 'community' as a new way of organising the social imaginary, creates the impression of an autonomous body, controlled by the central sovereignty. This in itself represents the transition of the traditional state and the controlled delegation of its powers. We are still not too sure of the political dimension of this process both in South Africa and Australia.

4. The emergence and continuity of a bottom-up resistance to the state project of making life or the process of governance more 'incigenous', needs to be examined. What no-one has explored yet, is what does it mean for the 'other' when the state becomes 'indigenous'? The exploration of establishing a bottom-up process of subversion from the re-created 'other' is a matter that needs further investigation.

South Africa provides a peculiar scenario, where government initiatives are confronted by what can be reduced to the 'soft vengeance of the people'. This represents a process in which the government incorporates 'indigenous' practices but parallel to that the 'indigenous' people continue recreating their own cultural practices of conflict resolution outside state control.

Australia will probably need to move beyond the image of the dancing Aboriginal, whose autonomy is limited, at least within the imaginary of the research work conducted, to that confined to state institutions of conflict resolution. Research and debate should not only concentrate on examining what happens within the logic of the state-controlled process of 'indigenising', but it should also examine, as in the case of South Africa, the nature and strength of those processes of community justice which are not controlled under the hegemony of the state.[13]

Conclusion

The exploration within a comparative framework of non-state forms of justice within (black) Australia and South Africa opens the door to analyse, amongst other things, the limits of the state and state justice. The transformation of state justice, via a process of 'indigenisation', could be seen from the perspective of enhancing the capacity of state rule, but also within the limits of the project of the nation-state as a body of reason and regulations.

A process of resistance, which challenges the terrible side of the Enlightenment era, that of subjugating 'knowleges', might need to develop in this era when the state has seen its limits and has welcomed the idea of 'indigenising' itself. Who will determine the process of liberating the 'subjugated knowledges' is yet to be seen both in Australia and South Africa.

References

1. For an interesting analysis of the 'civilising mission', colonialism, and the law, see Fitzpatrick, Peter, *The Mythology Of Modern Law*, London, Routledge, 1992.
2. See Hobsbawn, Eric, 'Barbarism: A User's Guide', (1994) 206 *New Left Review* 44-54, at 54.
3. See Cohen, Stanley, 'Crime and Politics: Spot the Difference', (1996) 47(1) *British Journal of Sociology* 1-21; Rose, Nicolas, 'The Death of the Social? Re-Figuring the Territory of Government', (1996) 25(3) *Economy and Society* 327-56; and Guehenno, Jean-Marie,*The End of the Nation-State*, University of Minnesota Press, 1995.
4. For an exploration of contemporary debates on the transformation of the (Western) state, see O'Malley, Pat, 'Indigenous Governance', (1996) 25(3) *Economy and Society* 310-26; O' Malley, Pat and Palmer, Darren, 'Post-Keynesian Policing', (1996) 25(2) *Economy and Society* 137-55; Rose, above.
5. For an interesting analysis of the emergence of the concept of 'community' and its relation to contemporary forms of governance, see Rose, above. O' Malley and Palmer, above, provide one of the most interesting assessments of this process as part of the transition from Keynesian types of policing to the post-Keynesian era.
6. O'Malley, above, ref. 4, examines this process, by way of discussing indigenous forms of governance in Australia. Clifford Shearing also explores the re-articulation of the way in which the state governs, and the process of organising governance. See Shearing, Clifford, 'The Reinvention of Community Policing', *Imbizo,* forthcoming, 1996.
7. O' Malley, above, p.323.
8. There are a few interesting things that can be highlighted from this discussion. First, the Aboriginal concept of the 'country', which I found to be quite unique — the 'country' as the place where a person was born, where family and clan members live, where the ancestor (still) existed. I found it very interesting in relation to the Western concept of similar term, the nation-state and sovereignty. The concept of 'country', at least my understanding of it from an outsider perspective, is one of more spiritual/geographical nature, rather than one (within a Western notion) of property/territorial ownership. For an interesting exposition of Aboriginal culture in New South Wales, see Parbury, Nigel, *Survival — A History Of Aboriginal Life in New South Wales*, Ministry of Aboriginal Affairs, Sydney, 1986.
9. For a comparative examination of this debate see Harding, Richard W., Broadhurst, Roderic, Ferrante, Anna and Loh, Nini, *Aboriginal Contact with the Criminal Justice System and The Impact of the Royal Commission into Aboriginal Deaths in Custody*, The Crime Research Centre at the University of Western Australia, the Hawkins Press, 1995; Nina, Daniel, *Rethinking Popular Justice: Self Regulation and Civil Society in South Africa*, Cape Town, Community Peace Foundation, 1995.
10. On community justice groups, see Bimrose, Glenys and Adams, John, *Review of Community Justice Groups — Kowanyama, Palm Island and Pormpuraaw*, Queensland, Yalga-binbi Institute for Community Development, 1995; on community justice centres, see Faulkers, Wendy, 'The Modern Development of Alternative Dispute Resolution in Australia', (1990) 1 *Australian Dispute Resolution Journal*, May; on family conference, see Braithwaite, John, *Crime, Shame and Reintegration*, Cambridge University Press, 1989; New South Wales Police Service, 'Community Accountability Conferencing', Sydney, NSW Police Service, 1996.
11. See, for example, Williams, Nancy , 'Studies in Australian Aboriginal Law 1961-1986, in Berndt, R.M. and Tonkinson, R. (eds), *Social Anthropology and Australian Aboriginal Studies*, Canberra, Aboriginal Studies Press, 1988, pp.191-237; and, O'Donnell, Marg, 'Mediation within Aboriginal Communities: Issues and Challenges', in Hazlehurst, Kayleen (ed.), *Popular Justice and Community Regeneration*, Connecticut, Praeger, 1995, pp.89-102.
12. Nina, Daniel and Schwikkard, Pamela J., 'The Soft Vengeance of the People: Popular Justice, Community Justice, and Legal Pluralism in South Africa', (1996) 36 *Journal of Legal Pluralism* 69-87.
13. A note of caution is important in this statement. From the research and literature review conducted, I am aware of the fact that good work has been done in relation to Aboriginal mechanisms of conflict resolution operating outside the state. My research intuitions suggest to me that the political (for different context reasons) has been a more determinant factor of analysis and practice in South Africa. For a contemporary analysis of Australia, see Hazlehurst, Kayleen, above, ref. 11.