

A FULL LAW

Christine Morris*

The following article is an extract from *Cultural and Spiritual Values of Bio-diversity: A Complementary Contribution to the Global Biodiversity Assessment*, edited by Darrell Posey.¹ This edition sets out an encyclopedic range of issues relating to Indigenous and intellectual property law.

I would suggest that any conflict that arises between peoples stems from a lack of respect for each other's law. This lack of respect emanates from a fear of the unknown rather than one wanting to deliberately have dominance over 'the other'. Similarly, in the case of intellectual property arguments in Australia, at the core of the dispute are differences in law. These core differences are best explored through the concept of custodianship, for it is custodianship over the maintenance of the world's resources that is everyone's concern, whether they wish to maintain them or exploit them.

Two Laws

First I will set out what I see as the divergence between the two laws, which leads to tension and acts of domination.

On the one hand there is Indigenous Law, which I term 'a full law' — that is, a law that is applicable to both the seen reality and the unseen reality. The unseen reality is as valid and impacts on the Indigenous world-view as much as does the seen. This law, which is always prefaced 'The Law' when used by the Indigenous, stems from a belief that humans must reciprocate with every aspect of life on earth and the spiritual realm. The penalty for a breach of this law is called 'payback'. The colloquial term goes to the heart of the guiding principle of reciprocity, which in turn shapes the custodial ethic.

On the other hand, I would suggest that the Australian Common Law is a 'half law', as it applies only to the seen reality. This is not meant to be a derogatory statement, but rather a reflection of what Australians in general wish their law to cover. This law stems from a monotheist belief system that has as its central dogma the supremacy of the human species as the custodian

* Research Fellow, Australian Key Centre for Cultural and Media Policy, Griffith University.

¹ D Posey (ed) (1999) *Cultural and Spiritual Values of Bio-diversity: A Complementary Contribution to the Global Biodiversity Assessment*, Intermediate Technology. Also at this time I wish to acknowledge the passing of Dr Posey, who gave his life to fight against the destruction of the Brazilian rainforest. He was awarded the Sierra Club's Chico Mendes Award, which recognises individuals and organisations outside of the United States who have exhibited extraordinary courage and leadership in their efforts to protect the environment.

of the Earth. The guiding principle of law in Australia is to protect the individual and their goods so that they may be an effective contributor to the economic system. Any breach of the law attracts a penalty of financial retribution or a restriction of the person's liberty.

I feel that these two laws actually could coexist in Australia if proper protocols were adhered to. Protocols, I have found, lead one into formalities that give both parties time to appraise the situation without commitment. By having this space, the two groups are allowed time to come to terms with their own fears about control of the relationship. Also, it allows a people who cannot conceive of another people's perception of reality (in the Australian case, the influence of the spirit world) to digest and come to terms with the fact that nobody is asking them to believe in a spirit realm; they are just being asked to have a mature attitude to someone else's reality. After all, is this not what human rights are about?

The clans that brought me up have taught me that conciliatory and inclusive behaviour leads to a more aware society. This inclusivity includes respecting the law of 'the other'. However, in the case of Australian Common Law, it is impossible for the Indigenous people to carry out their custodial duties if they are subject to a half law. And, more importantly, it puts them in breach of their own custodial duties and Law. Therefore, it is the inadequacy of the half law that is at the core of the tension in the biodiversity debate, not the fact that it is the law of the invaders.

The Ego and the Killing Fields

Ms Mary Graham, one of the clan elders of my grandmother's people, constantly addresses in her cross-cultural lectures the issue of the ego and its sense of being a discrete entity in the world, and the damage it has done to the Earth in its narcissistic pursuit of its own productivity and creativity. It is not that these pursuits are wrong; it is just that they have been allowed to run rampant, with no apparent boundaries. She adds that Indigenous societies adhered strongly to formalities and ritual in relation to caring for the land, one of the intentions being to give the ego a place to express itself in a more orderly manner.

Let me add here that formalities are the training ground for the maturing of the ego, not the killing fields of the individual's potential. Reverential behaviour is there to remind the ego that you are who you are because: (1) the dead that have gone before you still influence you from the grave (as have my ancestors); (2) you as a child spirit-being chose the clan into which you wished to be born and nurtured; (3) that clan passed down to you a genetic heritage of concepts and experiences as well as your physiological features; (4) that clan gives you your intellectual property through its stories, patterns, dances and songs; and (5) you are a custodian of a particular tract of land and in the future will become a custodian for other lands (through marriage, adoption or other circumstances).

But most importantly — and this is a point that is reiterated in all forums by Indigenous Australians — Land is the most important reference point in one's world-view. Land, therefore — like the Law — is always prefaced. Land

is not valued directly for its utility value, but rather because it is our teacher — it teaches us to be human, it gives us our place, and it fulfils the human longing to be needed for something meaningful.

Within the Indigenous world in which I move, the Law provides rules and regulations that allow me to be part of a clan. The Law does not protect my chattels or even my individual being, but rather protects a social system in which the individual feels safe and nurtured. It is a system that gives me a lot of responsibility and very few rights.

Due to the all-pervasiveness of the Law, one never has a sense of being alone, because a spirit, an animal or a plant is with you. So there is no opportunity to develop a world-view that would allow you to take, destroy or move another aspect of the Earth without some contrary thought as to whether this is correct or not. I am not saying it stops the person, but it is no surprise to the person if the Law asks for payback. However, it should be emphasised that this retributive part of this law is still enacted whether the Common Law condones it or not.²

I have personally observed the elders throughout Australia for many years and have learnt that when one is subject to a law that dictates one's every waking moment and movement, one does not become a burdened ass but rather a refined and dignified human being who carries no malice for the oppressors nor expectations on the young. Rather, one sees a world constructed around a divine comedy in which humans are hapless actors believing in their own self-importance. I have observed these elders take great delight in watching younger people come to terms with what the young think is the yoke of the laws, responsibilities and atrocities of the past.

These old people patiently enter the real-life dramas of the young and wait in expectation for the day the young realise the Law is not their enemy or a yoke which does not protect their person or personal possessions, but the dreaming track that leads them to a world full of wonderment, challenges, opportunities and, most importantly, humour with which to bring out the best in themselves, so that they can be role models for the next generation, the next carers of the fertility of the Land.

² See E Venbrux (1995) *A Death in the Tiwi Islands. Conflict, Ritual and Social Life in an Australian Aboriginal Community*, Cambridge University Press.