

RACISM AND THE LAW¹

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Some time ago I was sitting down with my co-worker Kate Munro, and I mentioned the amazingly discriminatory comments Fred Nile made towards Muslim women, ‘that they shouldn’t be able to wear their veils in case they are concealing a dangerous weapon’, the racism behind that statement floors me. I also commented that we hadn’t heard from Mr Nile for quite a while, and I thought he was retired or was repenting, and Kate commented, “that he hasn’t had a need to make any comments because the Government, media and other players were voicing his opinions.

I am presently reading Nicholas Cowdery’s book ‘Getting Justice Wrong’, and in his book he quotes Oscar Wilde’s comments ‘*by giving us the opinion of the uneducated modern journalism keeps us in touch with ignorance of the community*’.²

I was born in 1961 and noted that Aboriginal people were not included in the national Australian census nor were our rights protected under the Australian Constitution. Though the 1967 referendum voted to include Aborigines in the national Australian census and our rights are ‘supposedly’ protected under the Constitution. I agree with Chris Cunneen’s³ observation that Australian Aboriginals are still not included in the national census. We are still today seen as a threat to the national cohesion; to farmers, home owners; business people; oil and mining companies; and the like, in fear that we will claim Native Title over someone’s land. It’s as though we are non-deserving of our land or legal rights, we like many immigrants and refugees classified outside the national census.

We are not only portrayed as land grabbers, but also ‘criminals’. Mandatory sentencing regimes received backing from the community because the majority of non-Indigenous people in Western Australia and Northern Territory believe that the majority of Indigenous people pose a threat to the wider community.

Sercombe, in his research found that in Western Australia 87 percent of media coverage on Aboriginal people was about crime, guaranteeing Governments would gain support from the majority of Australian residents through mandatory sentencing laws. As Jeff Shaw QC observed: ‘*Law and order is an easy thing for Politicians to push...*’⁴

¹ Paper presented at the Racism and the Law Conference, NSW Community Legal Centres Conference, Sydney, 2002.

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² Nicholas Cowdery, ‘Getting Justice Wrong, myths, media and Crime, Allen & Unwin, 2001.

³ Doctor Chris Cunneen, Professor, Director of the Criminology Department, Law Faculty, Sydney University.

⁴ Nicholas Cowdery, ‘Getting Justice Wrong, myths, media and Crime, Allen & Unwin, 2001.

And it has become quite evident that Governments and other players are quite open to include race as a perquisite for pushing 'law and order' campaigns.

When I was working at the New South Wales Aboriginal Land Council, in 1992, I remember everyone at work celebrating 'poor'⁵ Eddie Mabo's win and victory in the High Court. What a joyous day this was for Aboriginal and Torres Strait Islander people, to finally have acknowledged in law, that Australia wasn't '*terra nullius*', empty continent, that Indigenous people did inhabit Australia before English settlement, and that we are entitled to native title rights.

I thought it was ironic that the law could espouse for two hundred and six years, that the law relies on evidence and facts, and yet can rewrite or ignore evidence and facts to ensure that it denies Indigenous people their native title rights or their rights as Australian citizens. Anyway, after celebrating with my co-workers 'poor' Eddie's win, I was soon brought back to reality. As the NSW Aboriginal Land Council observed an opinion poll that surveyed the general population about whether Indigenous people should be entitled to native title, it went 'do you support native title?' the majority answered 'no', 'do you understand what native title is?' the majority answered 'no'. This continues to astound me that people are so readily available to object to something they don't understand, or even worse, don't try to understand.

In 1993 after listening to talkback radio and other commentators, the publicity section of the NSW Aboriginal Land Council set out on the task of educating people about native title, taking out ads in *The Australian* and the *Sydney Morning Herald*, and trying to get as much media coverage as possible. But we realised the crux of the problem wasn't about whether people were educated or not, but that the majority of people were quite happy to remain ignorant to ensure that Aboriginal people didn't get something for nothing, or more than them, so our campaign shifted to educating people that 'Racism Sux.'

I have continuously questioned people's motives for wanting to remain ignorant and Oomera Edwards, one of my work colleagues, probably gave me the most enlightened answer, and I quote 'that to acknowledge past injustices would then mean that you have to question not only your ethics and ideals, but your friends, your family, your idols, your community, and your society, and the reality might not fit into your protected bubble.'

Partha Chatterjee, a leading Indian political philosopher once stated:

"The question concerning just how we manage to transcend relations is interesting and difficult, and certainly will not be solved here. What is relevant, however, is that we somehow or other do manage to overcome it, that we are not hopelessly imprisoned within a set of cultural cocoons and their norms, and that for some very obvious reasons (share cognitive and productive bases and greatly increased inter-social communication) we may

⁵ The term 'poor' is used in some Indigenous communities when someone has passed away.

expect fully industrial man to be even less enslaved to his local culture than his predecessors.”⁶

When I read this quote I found that I didn't believe the majority of Australians had just imprisoned themselves within a set of cultural cocoons, but ensured that other cultural groups living outside their cocoons are imprisoned and in some cases I mean literally imprisoned.

What I find frustrating is that we haven't come that far since our predecessors - we seem to be quite happy to take one step forward and two steps back. The majority are happy for Aboriginal people to make progress as long as we assimilate. But even if we do assimilate we are still treated differently because of our appearances, our skin colour, our race.

I often do lectures on the 'Stolen Generations' because I was and still am personally affected by this policy. The end aim of the Aboriginal Protection Act and the Welfare Act was to assimilate or absorb Aboriginal and Torres Strait Islander people into the wider society, and yet at the same time hold onto racist assumptions, stereotypes and ideas. Therefore not making assimilation possible as Indigenous people always felt on the outer. We therefore had to seek out acceptance and identity within our own communities. This notion naturally applies to ethnic people that have become Australian citizens but are never truly accepted within the Australian nationalism.

Naturally the issue around the 'Stolen Generations' doesn't end there with assimilation, it starts with one of the greatest injustices bestowed upon a people, by the Government legislating powers that would deny Aboriginal people their basic human rights 'to be a family', and is this issue resolved? No. Could it have been resolved? My answer is, 'yes.'

I have noted that in America, President Clinton has apologised and put in motion the healing process for Native Americans who were removed as children and placed in institutions, and in South Africa the setting up of the *Truth and Reconciliation Commission*. I guess what disturbs me (I thought South Africa was the most racist country) is that the Australian Government still denies today that such policy existed and that the policy was 'in the best interest of the child'.

What we find now is that instead of pursuing justice for a wrong committed against Indigenous people - Indigenous people, the government and the general population have come to a stalemate, because non-Indigenous people want to say 'removed' and Indigenous people want to say 'Stolen'. As I said once before it doesn't matter what terminology you use the result at the end of the day was the same, to deny Aboriginal people their basic human rights to be a family.

2004 marked the closing of the 'International Decade for World's Indigenous People' (where countries were suppose to reconcile with their Indigenous people throughout the world), and in Australia the year 2004 will not be marked by any great national achievements. The national achievements

⁶ Chatterjee, Partha 'Nationalist Thought and the Colonial World – A Derivative Discourse', p. 6. Zed Books Ltd, 1986.

that have been fought hard and long in the courts by Indigenous people such as Mabo, Wik and Hindmarsh have been denied, tampered with and watered down, not only by the courts but the Liberal-National Parties, including introducing legislative amendments to ensure Indigenous people are not only denied their native title rights but any existing rights. Unfortunately only a few politicians and supporters have come out speaking out against these injustices.

Governments have allowed, encouraged and participated in tabloid journalism - hunting shock stories, talkback hosts feeding off the anxieties and prejudices of the ill informed, and politicians on the election trail chasing easy votes, instead of arguing for the public good. I find what is sad is that I can't just point the finger at governments because the majority of Australians keep voting them in.

I have attended many conferences and have heard comments from people in the audience whispering that they're sick of hearing stories about the injustices bestowed upon Indigenous people, and these comments have often come out of forums where you think the audience is fairly educated. But these stories should be told and re-told until the people who are sick of listening to these stories realise the only way to get these stories off the agenda is to actively participate in ensuring that racism is eliminated. Probably a bit optimistic but at least to an acceptable, or should I say, an unacceptable level meaning those people that are racist are frowned upon and made to feel ashamed. Instead good people are ridiculed as the 'bleeding hearts', 'do-gooders' or politically correct, accused of taking a 'black-arm band view' of Australian history.

Maybe I'm being too hasty, as I'm always informed that Rome wasn't built in a day, but I know for a fact that Rome has been built, upgraded, renovated, and had alterations and yet we still haven't come to terms with 'racism'.

When you're looking at reports that were written ten years ago or more, such as the Royal Commission into Aboriginal Deaths in Custody, Green Paper on Juvenile Justice, health, housing, poverty, unemployment and see nothing much has changed you become sceptical wondering if people really want to strive for change or are quite happy to live in their cultural cocoons, unaffected by people's pain, suffering and disempowerment.

I would like to end by referring to Fred Chaney's comments he made at the Law and Justice Awards night in 2002, because I think his words must raise ethical questions for people working in the area of law. That is: 'whether they are there to ensure that injustices continue by not challenging the law, or whether they feel their role as legal advocates is to ensure that the law is fair, equitable and just?'

You see under the law, I am a victim of racism and oppression and maybe I don't want to be a victim anymore.