

Launch of ‘Indigenous Legal Relations in Australia’ by Larissa Behrendt, Chris Cunneen, Terri Libesman

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Good evening friends and distinguished guests,

Let me begin by acknowledging that we are on Gadigal country and I pay my respects to Elders past and present. I would also like to acknowledge that we are at Tranby College, an Indigenous community controlled education facility that has a long and interesting history that I would encourage any who do not know about Tranby to spend some time talking to Lyndon and other staff here tonight about Tranby.

Chris, Larissa, Robynne and Terri, Congratulations on the scope and quality of the book. This publication breathes life into the law and shows the theoretical as well as the everyday ways the law impacts on the lives of Indigenous people.

The book covers a range of legal issues, from over representation in criminal justice and child protection; to protection of land and culture; to the rights agenda; and international developments.

What helps all of these issues to hang together is a collection of common themes articulated in the preface by Larissa Behrendt and Chris Cunneen:

- The importance of history;
- The pervasiveness of racial discrimination;
- The importance of international human rights standards;
- The importance of Indigenous decision making;
- The importance of Indigenous political struggle; and
- The limitations of Anglo- Australian law.

These themes echo much of my own work as Social Justice Commissioner and should be touchstones of any thoughtful analysis of Indigenous legal issues.

In particular, the book illustrates the connection between past, present and future in Indigenous legal relations. The exploration of the Anglo legal justifications for colonisation and dispossession, genocide, protection, assimilation and forcible removal provides a historical lens to look at contemporary ways Indigenous people interact with the legal relations: so often through the child protection system, juvenile justice and criminal justice systems.

These problems aren't just historical. For instance, looking at criminal justice matters, the book explains how over policing, lack of support, services and accommodation

options and recent legislative amendments like the NSW Bail Act are increasing the number of Indigenous adult and juveniles in the criminal justice system.

Importantly, the book positions the issue of over representation in the criminal justice system as a human rights issue - particularly where imprisonment should be a measure of last resort.

Given the current lack of viable diversions and alternatives to imprisonment, especially in rural and remote areas, we can see that Indigenous Australians do not have the same access to the range of sentencing and support options as non Indigenous Australians.

We know, and the book articulates this as well, that the situation is even worse for Indigenous women, who are 23 times more likely than non Indigenous women to be imprisoned (compared to 17 times more likely for Indigenous men). Put on top of this is the fact that about 80% of these women have young children who suffer when they are imprisoned and we begin to see the cycle start again.

Another extremely disadvantaged group in terms of their interactions with the legal system are Indigenous people with cognitive disabilities and mental health issues.

Last year I released a report on preventing young people with cognitive disabilities and mental health issues from getting involved in the criminal justice system. Regrettably, many of the findings relating to children and youth, translate across for adults as well. In general, there are few attempts to help these people actually understand what is happening to them in the legal system, they can be excluded from diversions and treatment programs because of their disabilities and they are much more vulnerable when they are in custody.

For those with extreme cognitive and mental health issues, they can be in a sort of legal limbo. You may have heard the media recently report on the case of a severely intellectually disabled Indigenous 25 year old man from Wadeye in the NT. Since the age of 15 years he has committed minor offences, like petty theft and drinking in public but this has escalated to low range sexual assault and indecent exposure. Because of the lack of mental health services he is being held indefinitely in Berrimah Prison under 22 hour lock down for his own protection. To fill in the time, apparently he spends hours pacing up and down his cell, periodically asphyxiating himself by squeezing his throat with his thumbs to block off the airway, to fill the hours and despair. -- This is not the picture of a healthy, fair legal system that respects human rights.

We managed to get the issue of the 17 year life expectancy gap between Indigenous and non Indigenous Australians recognised as a human rights issue in the successful close the gap campaign. When will we managed to get the same sort of recognition for the fact that Indigenous adults are 17 times more likely to be in prison, and Indigenous juveniles make up roughly half of all the juvenile justice detainees?

Getting it on the human rights agenda also means putting targets and benchmarks in place to make sure we meet goals in reduction of imprisonment. I note that some of the state plans have gone some way towards this - NSW says it will achieve a 10% reduction in recidivism by 2016 - but of course for this to actually happen, we need to

see some serious planning, resource allocation and consultation with Indigenous communities.

The thing that struck me in looking through this publication is that although the law has been used and abused to justify dispossession, genocide and discrimination, it also reminds us that the law is also a powerful tool for change for Indigenous people.

This is a forward looking publication that considers legal options for social change that intersects with very topical issues and debates around racial discrimination law, constitutional change and Indigenous representation.

The issues in the book around self determination and national representation and options for rights protection are being played out now through:

- The Role Indigenous people are to play in the national rep body workshop in March to develop and present a report to the Minister on a preferred model by July.
- The current consultation and debate around human rights protection being initiated by the government. Also, a chapter in the forthcoming Social Justice Report covers a human rights protection framework for Aboriginal and Torres Strait Islander people. I will say no more on this issue other than, “great minds think alike”.
- The Suspension of the Racial Discrimination Act in the NT - it will be interesting to see how Barbara Shaw and the Prescribed Area Peoples’ Alliance representing the town camps and nearby communities fare at the UN CERD committee that will consider their complaint that identifies the discriminatory practices in the NT intervention legislation. More interesting will be how the federal government copes with the likely condemnation.

These are all examples of high level, formal Indigenous interactions with the legal system but there also needs to be change at the grassroots level.

Last year my office ran community legal education for Indigenous Family Violence Prevention Legal Education Workers from places like Port Augusta, Broome, Tennant Creek and Cape York. This training has taught workers about the relationship between Australian law, customary law and human rights. It has helped Indigenous workers become more informed about how the legal system works, and how they can make it work for them.

After all, people need to be empowered to understand the legal system before they can go about trying to change it. That is what this book does too - it helps inform and educate the next generation of lawyers and activists who will continue to fight for these issues.

Let me formally launch ‘Indigenous Legal Relations in Australia’ by congratulating the authors, Chris, Larissa, Terri and Robynne for writing this “must read book” that will go a long way to inform, and hopefully inspire, legal and political science students, to view the legal system and Indigenous peoples through the lens of human rights.

Thank You