

## BREAKING THE SILENCE: PUTTING THE VIOLENCE INTO CONTEXT

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### I INTRODUCTION

I have been asked to address the topic of family violence in Indigenous communities, focusing on issues such as the ability of the criminal justice system to deal with the problem, as well as debating alternative methods of prevention, education and punishment. Yet, I feel that it is always hard to simply focus on one part of this subject without looking at violence in its historical and current context. The aim of this article is to explore that context, investigating the legal system, the police, the views of the wider community and the racist attitudes that have in many instances denied Indigenous women and children access to justice.

### II IMPOSING A SYSTEM OF VIOLENCE

From the various readings, consultations, conversations and research that I have used to investigate violence in Aboriginal communities before colonisation, it is apparent that violence was never tolerated. It would be ridiculous for me to say that violence did not exist, but certainly it did not exist to the extent it does today. In the majority of tribes and clans, men or women who perpetrated violence on another person were usually shamed or speared, and in horrendous cases of violence, banished or killed. There was a system of law in place, men and women were law-makers and law enforcers, and the laws were respected. Everyone knew the law, and everyone was treated equally before the law.<sup>1</sup>

The colonisers subjected Indigenous women, men and children to horrendous atrocities. At no stage did the law offer protection to Indigenous women and

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1 See, eg, Australian Law Reform Commission, 'Traditional Aboriginal Society and its Law' in W H Edwards (ed), *Traditional Aboriginal Society: A Reader* (2<sup>nd</sup> ed, 1998) 213; Domestic Violence Legal Help, Darwin Community Legal Service, *Aboriginal Women, Domestic Violence and the Legal System: A Report on Legal Education and Discussions in Remote Aboriginal Communities in the Top End About Domestic Violence* (1995) 28.

children who were victims of rape, violence and murder. In one example, reported by Henry Reynolds:

The missionary James Gunther sought to preserve Aboriginal women 'from that frequent and almost constant intercourse with voluptuous [sic] Europeans' in order to 'perhaps rescue them from bodily and moral ruin'. But his colleague William Watson reported that there was scarcely a man within 40 miles of his mission 'Bond or Free who is not living in adultery with unhappy females'. The traffic in children caused even deeper anger. Lancelot Threlkeld reported his horror soon after arriving in Newcastle that he had heard the shrieks of girls aged eight or nine being taken by force by 'the vile men' of the town.<sup>2</sup>

When I reflect upon the impact of the introduced Australian legal system on Indigenous people, I note that the colonisers broke every one of their own laws by the violence they visited upon Indigenous people. Indigenous people will always feel contempt for the introduced legal system in Australia because the laws were imposed to control them, to dispossess them of their lands, to discriminate against them and, in some cases, to exterminate them.

### III THE IMPACT OF ASSIMILATION

From approximately 1840 to 1969, federal and State governments were concerned with the increasing number of children of mixed blood. Under the White Australia Policy, governments wanted Australia to be a predominantly British society.

One method used to achieve this was to remove Indigenous children from their families. *Bringing Them Home*,<sup>3</sup> the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families ('the Inquiry'), demonstrated the difficulties that Aboriginal children experienced in forming relationships later in life due to prolonged separation from their families, culture, identity, community, language and land. As the Inquiry noted:

The quality of an individual's future social relationships is profoundly affected by a baby's first experiences ... As early as 1951, John Bowlby identified infant separation from the primary carer and institutionalisation as causally connected to a variety of psychiatric disorders in adulthood ranging from anxiety and depression to psychopathic personality ... The reason for this seems to be that the primary carer was not replaced by a person with whom the child could form a loving attachment ... The strong and healthy bond that a child develops towards family in early years is the foundation for future relationships with others, and for physical, social and psychological development. When a child has a strong and healthy attachment to family, both trust in others and reliance on self can develop.<sup>4</sup>

We are now witnessing the effects of the policies of removal in our communities – parents who are not able to adequately provide love and care to

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2 Henry Reynolds, *This Whispering In Our Hearts* (1998) 34 (citations omitted).

3 Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997).

4 *Ibid* 181 (citations omitted).

their families, partners or children, because of the abuse they suffered growing up in institutions, homes or non-Indigenous families that were devoid of love and security. This was often made worse by later incarceration.

Even today, the Commonwealth government claims that such policies were in the best interests of the children, and that the violence perpetrated on Aboriginal people was conducted with the best intentions of 'civilising' them as a people. Governments, the media and members of the Australian public can no longer deny that these policies damaged Aboriginal children. To continue along this path is to place Indigenous families at risk, as resources have not been made available to assist families to gain parenting skills and to receive counselling in a culturally appropriate manner that would enable them to heal.

#### IV VIOLENCE TODAY

When reporting violence, the media often portrays it as being acceptable within Aboriginal communities. Negative media coverage, commentary and public opinion encourages readers to believe that violence only occurs within Aboriginal families. This ignores the fact that, in 1996, the NSW Bureau of Crime Statistics and Research found that 7.1 per cent of all women had suffered from some sort of violence in the twelve months leading up to the Women's Safety Survey.<sup>5</sup> Violence is not just an 'Aboriginal problem', but a problem that all Australians have to come to terms with.

One of the problems concerning family violence in the wider community is that, to some degree, society has long accepted and normalised violence in the home. Crime prevention initiatives adopted by the States and the Commonwealth have historically directed attention to crime that occurs in public places. Very little attention has been given to violence committed in the home. As a society, we have punished perpetrators who commit violence in public much more harshly than perpetrators who commit violence in the home. We echo that 'violence is violence', and yet we have allowed victims of family violence to suffer in silence. It is only in recent times that we have seen some attempts made to address this.

Yet I find when discussing the issue of violence with Indigenous women that opinions vary as to how to deal with the problem in their communities. Some Indigenous women are reluctant to report violence fearing both community repercussions and the danger that their partner may die in custody. This danger is real, as was well documented by the Royal Commission into Aboriginal Deaths in Custody.

The women who report incidents of violence believe that the perpetrators should be punished for their violent behaviour. However, while they expect the perpetrator to be punished, they are often more concerned that Indigenous men

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5 Christine Coumarelos and Jacqui Allen, *Predicting Violence Against Women: The 1996 Women's Safety Survey*, Crime and Justice Bulletin No 42, NSW Bureau of Crime Statistics and Research (1998) 2, Lawlink NSW <<http://www.lawlink.nsw.gov.au/bocsar1.nsf/pages/cjb42link>> at 27 June 2002.

placed in custody will not be rehabilitated and may seek revenge when released. Neither group of women believe that a prison sentence will deter men from their violent behaviour, or encourage remorse.

Another problem that Indigenous women face when reporting violence is that the criminal justice system is often unable to respond appropriately to their needs due to racist assumptions and prejudices. If the police make an arrest and the woman appears before a court, the outcome may depend in some cases upon her character, race and appearance, and how much she is willing (or able) to pay for good legal representation. It may also depend on the magistrate's bias.

When I was working in the field of family violence, I received a complaint alleging misuse of power by a magistrate. An Indigenous woman with her six month old child appeared before the court requesting protection from an assault. The magistrate had asked her to state what happened to her on the night she was assaulted. The woman did not feel that this was appropriate, as the police had taken her statement, charged the perpetrator, and the evidence was in front of the magistrate. Because her partner was present and the courthouse was filled with a majority of non-Indigenous people she had a great sense of shame and fear, and she refused to retell her story. The magistrate stated to her that if she refused then he would find her in contempt and lock her up for a couple of hours. The woman again refused. The magistrate directed the police to take the woman into custody; the court staff had to mind the woman's baby while the police escorted her out of court to the lock-up. After two hours, the woman was released from the lock-up and again appeared before the magistrate who again told her to retell her story. The woman did so, in fear of being locked up again. This is one of the many situations in which Aboriginal women have been treated inappropriately when reporting violence.

Aboriginal women often suffer from the dual barriers of racism and sexism when trying to access justice and services. Frustrated Indigenous women in many different communities have pursued their own alternatives to address family violence. Indigenous women's refuges and safe houses have been established in many Aboriginal and Torres Strait Islander communities throughout Australia. In New South Wales, Aboriginal women established their own legal centre, Wirringa Baiya, which provides legal information and advice to victims of violence. In the Northern Territory, the night patrol Yuendumu is staffed by women to curb the level of violence.<sup>6</sup>

Centres and programs that have been established by Indigenous people for Indigenous people must be supported and encouraged. Indigenous people in Australia practicing their traditional lore should be able to continue to do so. The Australian legal system must accommodate this, and Indigenous communities must receive resources (financial and non-financial) to address the issue of family violence in a culturally appropriate manner.

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6 Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (2001) 178.

## V CONCLUSION

The imported legal system in Australia was made and enforced by white men for white men. Recently, some laws have begun to accommodate women, children, Indigenous and 'other' people. However, the body of law is still based upon white, masculine, discriminatory beliefs. Women, children, Indigenous and 'other' people are not, in many cases, respected or treated equally before the law.

I firmly believe that the majority of Australians, no matter what race, gender, background or creed, will not feel disdain towards the legal system if they know what the law is, that the law will protect them, and that it is fair and just. It is only when laws discriminate and marginalise certain groups that people will feel contempt for the legal system.

I strongly urge all Australians to reconcile with Indigenous people, and to accept that horrendous violence was committed against Indigenous people in the name of colonisation. We need to acknowledge that the violence we witness today is a product of the past before we can move on.