

Justice

“Justice will not be served until those who are unaffected are as outraged as those who are.”

Benjamin Franklin

In an excellent article (*SMH 2 March 2014*) by long-time Aboriginal advocate, Sol Bellear, he suggests that reconciliation has failed. This leads me to ask the question, “What is the basis on which reconciliation might be delivered?”

While I regularly read of new opportunities that are being promoted for Aboriginal people under the banner of ‘reconciliation’ and I greatly applaud them, at the same time I wonder if we have confused the meaning of the word itself and whether this could be the root of Sol’s conclusion?

Reconciliation is not something that one decides to ‘do’ – it is a process, at the end of which there may be reconciliation but this can never be guaranteed. In our hearts we know that without justice there can be no reconciliation.

The Truth and Reconciliation Commission of South Africa refers to Justice as, a *complex process that emphasizes victim healing, offender accountability, community participation, reparation of losses, and in some cases forgiveness*, or reconciliation. Truth and justice are inseparably bound and essential components leading to possible reconciliation.

The first step in the process has always posed a huge problem for Australia. This engages us in learning about, understanding and acknowledging the appalling realities of settlement that stripped away from Aboriginal peoples all of their rights as human beings. Until we are truly knowledgeable about the gross injustices of the past, how can we express our genuine remorse, our sorrow? These are essential steps if we are to move forward.

And what about reparation? There has been little discussion about how this should be approached. What we do know is that justice requires reparation if ever there is to be any chance of reconciliation. Reconciliation itself lies within the hands of those whose rights have been violated and who have been dispossessed. It is not a funded Government programme. In the end, it relies totally on the forgiveness, generosity and goodwill of the Aboriginal peoples.

And further, it doesn’t hurt for us to try to understand how these terrible things happened. Would it have been different if there had been some attempt to make agreements or treaties with Aboriginal peoples? The failure of early British administrators to address basic rules of engagement with the Aboriginal residents or to determine agreements that might well have formed a treaty, plagued many administrators and legal decision makers over the years that followed. Their views often swinging from one perspective to another and so started a state of instability that has remained ever since.

A push to end the instability and address the appalling abuses of the past began in the 1960s with the civil rights movement in the United States which led to the expression of much Indigenous discontent around the world, including that of Indigenous peoples in Australia where major changes were demanded. Internationally one of the major reasons for moves towards constitutional reform over recent times has been in response to these demands and in belated acknowledgement of the importance of protecting the rights of Indigenous peoples.

With the support of the United Nations numerous countries have been working to secure the rights of their Indigenous populations. Probably one of the best examples of this is in Canada where in 1982 the Constitution Act greatly assisted in the securing of Aboriginal rights within the constitution, a safe place away from political manipulation and poll-driven decision-making. Canada has affirmed the need for modern-day treaties and continues the negotiations with Indigenous communities in a context of self-determination and self-government. Of all Commonwealth countries, Australia is the only one without a treaty with its Indigenous population.

In 1973 Gough Whitlam at the Gurindji Land Ceremony said, *I solemnly hand to you these deeds as proof, in Australian law, that these lands belong to the Gurindji people and I put into your hands part of the earth itself as a sign that this land will be the possession of you and your children FOREVER*". Three years later the Aboriginal Land Rights Act (NT) came into being. It was a time of hope for change in Australia.

For all the good intentions of the time, it took Yothu Yindi to summarise their fate: *"words are easy, words are cheap ... but promises can be broken, just like writing on the sand."* Amendments to the Land Rights Act were passed in 2006. Northern Territory communities were coerced to give leases over their lands to acquire housing for their people following the advent of the Intervention in 2007. For all the more enlightened thinking of the 1970s we must surely recognise that Aboriginal peoples have no chance of building a future without protection from constant reversals of politically driven policies.

For Aboriginal Peoples that lack of certainty has denied them of a future for which they can take responsibility for their own affairs. This is why communities of the Northern Territory have long called for 'treaty'. What the people want from negotiated compacts is the right to make their own decisions and control their own lives and land, free from the whims of changing Governments. Symbolic gestures will never be enough.

The Apology of 2008 acknowledged the ruthless removal of thousands of Aboriginal children from their mothers. They were words spoken expressing deep regret. It was a cathartic experience for many even though it provided no practical relief for those whose lives had been ruined by grief and loss.

What more would it take to acknowledge the terrible truths of settlement – the ruthless massacres of many thousands of Aboriginal peoples, the rapes, the enslavement, the cruelty that was part of everyday life for Aboriginal peoples across this land and which continued up until the seventies with impunity?

Surely current day plans for changes to the Constitution provide us with the greatest opportunity of recent times to start on the long path of addressing the horrors of the past, the unfinished business of land ownership and the need for appropriate reparation.

While higher authorities have concern about proceeding with a referendum that may fail for fear of undermining our national unity and the hurt it may cause Aboriginal people, the abandonment of fighting to secure Aboriginal rights within the constitution may have even greater consequences.

Any notion of national unity should not underestimate the simmering resentment and hurt of the ongoing disempowerment created by the Intervention (including the current Stronger Futures

legislation) across the Northern Territory or the increasing rates of Aboriginal incarceration or the disproportionately high rates of removal of Aboriginal children from their families. It would be foolhardy to simply ignore the destabilising influences resulting from these and other unresolved issues of discrimination which continue to plague Aboriginal society across the nation.

We should be encouraging a broad and enlightened debate with a determination to change the national consciousness. Education must include a truthful history, denied to most Australians during their school years. It is only with full knowledge of the past that there will be an understanding of the injustices that must be addressed. We need leadership that will articulate our national responsibilities and have greater faith in the Australian people's ability to positively respond.

There is little doubt that any chance of reconciliation will remain elusive if we do not show the courage to grasp the opportunity for justice and truth. A constitution that limits Australia's relationship with Aboriginal people to one of simple 'recognition' is grossly inadequate. We can do so much better.

For many Aboriginal Peoples the major objective of constitutional reform is the articulation and the protection of Aboriginal rights that includes a permanent mechanism which will secure agreements or treaties, if you will, within it. With protection of rights there is some chance of Aboriginal peoples being able to move forward in the process of self-determination. It is that possibility, and only that possibility, that makes constitutional change worthwhile. Listen to Aboriginal people calling for justice, understand what that means and then stand beside them and push for real change.

Sol is of the opinion that reconciliation has failed. The fact is, I don't think reconciliation has really begun and nor can it till we establish justice. This I think Sol may agree with.

Michele Harris
'concerned Australians'