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a different tune

The politics of despair

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The people of a tiny, poor and impossibly remote Aboriginal community in the East Kimberley region of Western Australia wrote a wonderful letter that the *Age* published on 14 December. They explained that they love their children and will do whatever they can for one another. I was abashed. They showed what dignity really means.

The greatest inventions of the twentieth century were two great civilising principles: democratic governance and universally accepted human rights, which are reflected in treaties governments sign but were once 'natural law', or divine. Yet in Australian public life anyone who refers to them is treated like an idiot though called an 'intellectual'. We take pride in our freedoms – of choice, markets and speech, especially the racist, sexist or homophobic speeches rich radio commentators make. Yet we have not understood what the people of Mulan did. And how badly we have behaved.

The Mulan community seized an opportunity. It was the first meeting of the Federal Government's new Indigenous Advisory Council, Michael Long had walked to meet the PM and he and the old guard publicly acknowledged the Howard Zeitgeist using the newly politically correct but venerable language of 'mutual obligation'. They got attention from their government by asking for services they had a right to take for granted. They wanted a petrol pump. They shall have one, funded by the feds. The state government will now also monitor their health services. 'In exchange' they have been publicly humiliated for promising that they will wash their children's faces, delouse their houses, clean up their rubbish and pay their rent, and act to prevent petrol-sniffing and truancy.

Those who have critiqued the imbalance of power between the parties to this 'contract' against the measure of international human rights treaties, such as the UN Convention on the Rights of the Child which assure the human rights of all children to a decent quality of life, for which no promises can 'pay,' have been dismissed as 'idealists' and impractical. It would seem all agree, even a national 'A-B demographic' paper such as the *Age*, that this is a good example of what the federal government calls 'practical reconciliation'.

It has nothing to do with reconciliation and bugger all about mutuality either. Consider this: on Wednesday 15 December the WA Commissioner for Equal Opportunity, Yvonne Henderson, once the Housing Minister under a Labor state government, is to release a report of her two year inquiry. It will call for dramatic improvement in Aboriginal access to public housing. The report is expected to cause a

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racist storm. The people of WA are quick to judge its indigenous population, less than 3 per cent of the total but the majority of those in public housing or squatting with relatives or camping on the verandah of the Catholic Archbishop of Perth's private residence, as dirty, disruptive and rotten tenants, whose children therefore 'deserve' to live in squalor.

More than a decade ago I gave a legal opinion about the complaint of the only Aboriginal woman who has ever managed to substantiate in any Western Australian tribunal in the last twenty years, a complaint of race discrimination against the WA State Housing Commission. It gave her the confidence to make her complaint, and a Perth law firm a justification to run the court case for nothing. There are still some Don Quixotes, thank God. The Aboriginal Legal Service wouldn't touch it.

Joan Martin was one of those wise Aboriginal grandmothers who keep families together. A good neighbour, responsible tenant and respected community leader, she lived in her little publicly-owned house in an ordinary Perth suburb without incident, until she took in her homeless children and grandchildren, because they had been evicted and could not get back on 'the list' for public housing until they had purged their debts. They overcrowded her little house and were noisy and upset her neighbours. The State Housing Commission (SHC) told them all to get out.

Against all odds, she satisfied a Supreme Court judge that she had been indirectly discriminated against because of her Aboriginality. By dishousing her children and their families and ignoring the personal consequences, the effect of dispossession on indigenous children, and their grandmother's cultural - and completely human - obligation to take them in, state housing authorities required her to choose between complying with standard housing density requirements, or meet her cultural duty to her family members. This was race discrimination.

It was a pyrrhic victory. The public environment was toxic. The SHC briefed the media with private information about the family which triggered an outpouring of public loathing of Aboriginal people. The government appealed, and won because three different judges agreed that bad tenants should be evicted whatever the consequences for their children and whatever the propriety of the housing decisions for Aboriginal families. They were all forcibly evicted in a media frenzy on the day of a family funeral. A private benefactor provided another house. Some bastard firebombed it. Joan Martin became sick and homeless. God knows what happened to those kids.

As the acting Equal Opportunity Commissioner, in September 2002 I launched the public inquiry into Aboriginal people's access to public housing that Commissioner Henderson has now completed, not because of Mrs Martin's tragedy but because the flood of complaints of discrimination against government bodies to the Commission was by then more than 40 per cent of all complaints received.

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More than 90% of these were made by Aboriginals about discrimination in public housing. In not one case nor in face of the ever growing bulk of them had it ever been acknowledged that there might be a race-related policy or program difficulty. Inexplicably the housing authority kept no data on indigenous tenants. Without it, how could any tribunal find indirect discrimination? How could one already disadvantaged applicant prove that tenancy requirements that were 'the same' for all had a disproportionately negative impact on Aboriginal tenants, or that they could not satisfy their requirements because of the characteristics of their race, or that the requirements were 'unreasonable'?

The housing inquiry went beyond the suburbs. In regional WA indigenous housing needs are particularly poorly met. The powerful evidence of gross neglect is on the EO Commissioner's DVD. Even so, in other Kimberley towns such as Wiluna, Aboriginal communities provide the bulk of the services on which non-indigenous communities depend. According to a local government review in 2003, the only lawyers and doctors and employment programs and local businesses and public infrastructure and local government initiatives were sourced from Aboriginal communities: yet these were not perceived as gifts to 'undeserving' white residents nor were they asked to 'pay' for them by engaging with that community or tidying up their lawns or private lives.

Laws that entrench disadvantage need to be changed. Human rights laws cannot do this because they have no status in Australian law, as the High Court has twice found this year, through the application of statutory interpretation and the lack of any constitutional or legislative human rights guarantees. These human rights treaties we solemnly ratified are just words. They cannot invalidate or diminish the draconian laws which 'legitimate' but don't make right the detention of asylum-seeking children going mad in desert camps, and stateless, harmless men and women who are not refugees but have no other manger where they may safely rest than ours.

Aboriginal children have a genuinely moral claim to first consideration in public decision making. The wretched state of their health and happiness, impoverished environment and life choices are a disaster in terms of the human right of children as citizens. Yet there is a constant chorus of disapproval and distance-making that afflicts those who say such things. That the Law Institute of Victoria chose to devote its December Journal to human rights is a powerful and honourable exception to the rule, that our courage fails us if the group doesn't like what we say. There is a place for human rights in the law, it says: there is none, it seems, in politics.

It is easier to accommodate the tyranny of petty coercion: lawyers warned that human rights advocacy is career-limiting; public servants that they are omitted from meetings because of their inconvenient advice; staff not thought of for informal opportunities because they are 'idealistic' and thus unreliable. The 'illegitimacy' of those who make the case for the rights of an underclass is daily, subtly reinforced

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by references to their privilege, education and confidence, their 'politically correct' status. The politically correct message is, actually, 'Shoosh'.

The proposal of the people of Mulan was a moral one, but it bloomed from the politics of despair.

About the author

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Published Comments

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