

JUSTICE FOR INDIGENOUS PEOPLE - REFLECTIONS ON THE PRINCIPLES THAT SHAPE OUR PERSONAL RESPONSE

A paper presented by Deputy President Paul Smith, Land and Resources Tribunal, Queensland to the Australasian Christian Legal Convention, Melbourne 2 February 2001.

I well remember the events of early 1988. At that time I was a barrister employed as a legal officer at Crown Law, Queensland. The previous four years or so, I had been the assistant to a very senior legal officer in the Mabo case.

Readers may recall that 1988 was a rather turbulent time in Queensland. The Fitzgerald Inquiry was in full swing. The officer principally handling Mabo became fully engaged in Fitzgerald related matters and I was left to look after Mabo myself. Of itself, this could be seen as a rather daunting prospect, as that time I had only been admitted for a little over five years. What made taking over sole responsibility for Mabo even more daunting was the fact that about four weeks after assuming that responsibility, Mabo No 1 was heard by the High Court.

It is history now that by a 4/3 majority, the High Court held a piece of 1985 Queensland legislation to be in breach of the Racial Discrimination Act 1975 (Cwth). What would not be apparent to any but those few people who attended the hearing was that argument on the RDA point actually took up only a small amount of time at the hearing. Without going into any detail, I can say that the way in which the RDA issue would be handled at the hearing was a matter of some debate amongst the State's legal team.

Unlike the heavy reliance which is now made on written submissions to the Court, back in 1988 the submissions made in written form were much more of a skeleton, with the details to be provided in oral argument. Accordingly, one side could not be exactly sure what the other side would come up with during oral argument.

Mabo No 1 was heard in March 1988. One evening early in the proceedings, the State's QC asked me to go to the High Court library to undertake some research. I was at the library for many hours. Not surprisingly, and about midnight I was well and truly there by myself. As I was moving from row to row looking at various Reports, I picked up what I thought to be my manilla folder containing my research material. A short time later I went to open the folder and I immediately realised that it was not my folder but was, in fact, the research folder for the Mabo legal team.

So there I was, at midnight, all alone, holding my opponent's case in my hands. What did I do? What could I do? From a moral and ethical point of view the answer was simple. I returned to the place from which I had picked up the folder and, without reading any of it, replaced the folder where I had found it.

In the years that have passed I have often wondered what would have happened had I made another decision that night and read the other side's case. With such a finely balanced decision of the High Court (as mentioned above the case was decided 4/3) would I have obtained information which may have altered the way the case was put by the State and therefore seen a different outcome? The flow on effect would of course have been enormous. Without Mabo No 1 being decided the way it was, there would have been no Mabo No 2, which would have meant no Native Title Act (or at least certainly none in 1993!), and the lot of indigenous Australians, which has advanced, at least in legal terms, so far in the last decade, would probably have been far removed from what it is today.

I am not of course saying that a non-Christian lawyer would not have come to the same decision as I made that night. What I am saying is that my Christian beliefs made the decision a very easy one for me. Interestingly, though I was never accused of doing the wrong thing, there have been those who have indicated that in the same circumstances as myself they would have seen no legal ethical problem in either reading or indeed copying the material.

This one example goes a long way toward showing that Christian lawyers can, and do, make a real difference.

I have worked closely in the field of indigenous rights for almost two decades. Until my appointment to my current Judicial position, my work was all as a Queensland public servant.

I was often asked why I continued to work for the public service. One major reason was that I knew that I was in a position where I could actually make a difference. I had a simple philosophy - I would carry out whatever instructions I was given to the letter for as long as I felt morally able to do so. If the position was ever reached where I felt that I could not morally or justly follow the instructions I was given, then I would simply resign.

Apart from my Christian beliefs, what other factors had shaped me into the person I am today, and helped to make me make the decisions that I do?

I was first exposed to the racism practised (in many circumstances I think almost unknowingly) by many ordinary Australians as a child.

Way back in the 1960's, my father had just bought a new car. For my family buying a car was a very big thing indeed. One day dad and mum were driving along near the river bank of the Bremer River in Ipswich. I was in the car with them. At the time dad worked for the Ipswich City Council. A council employee was mowing grass at the side of the river. Just as we passed the mower got away from him, overturned, and badly cut his leg. Dad stopped the car and went to assist the worker. After applying first aid, we drove the worker to medical assistance.

When dad's fellow workers heard of what he had done, he was met with disbelief, disdain and scorn. I suspect that it had an adverse impact on his career. The other workers who worked in dad's office could not believe that he would have allowed

the worker to ride in his car even if he wasn't injured, let alone actually bleed in the car. You see, as you have probably guessed, the injured worker was an aboriginal person.

I know that to many indigenous people the example I have given above is nothing compared to what they have experienced in their lives. However, I can say that it had a marked impact on a young boy growing up in Ipswich.

At the interactive session that I will be conducting at the conference, I will give many more examples of situations that I have found myself in over the last couple of decades, the decisions that I have made, and the consequences that have flowed. I can say that in all things I have endeavoured to be led by prayer and study of what the Lord would have me do, and I have trusted Him for the outcomes.

If there be one message that I would like attendees at the conference to take away from my session, it is this. The concept of justice for indigenous people is so multifaceted and huge that many of us could be forgiven for giving up as it is just too hard. Alternatively, others may leave the issue to politicians or other leaders to work out. Either of these responses however misses the real point. At the end of the day it is how we respond as individuals to the circumstances we find ourselves in which shapes what occurs around us.

Look at what has occurred in the area of reconciliation in Australia. The crowds of people who walked across bridges last year made a dramatic, and hopefully long-lasting, impact. But what were those crowds? Nothing more than a very large number of individuals each making their own personal response!

We must be true to ourselves, true to our Lord, and obedient to the law in all that we say and all that we do.

What impact have personal responses that I have made had on the issue of justice for indigenous people? I guess that history will be the judge of that. I am content for myself with the knowledge that through what I have done, I have made a real difference. I thank the Lord for that. Believe and know that you can make a difference to.