Indigenous Policy Issues in a Christian Perspective

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Mark Brett

Professor of Hebrew Bible, Whitely College
Policy Officer, Native Title Services Victoria

I want to begin by paying respects to the traditional owners of the country on which we meet today – the Wurundjeri people and their Elders past and present. We also acknowledge their involuntary sacrifice of lands and resources, and the fact that the historic grievances of traditional owners remain unresolved.

When Chris Marshall and I began to discuss the agenda for today, we wanted first to say how difficult it is for whitefellas to speak about these issues and how ideally there would be a genuine conversation with Indigenous people. Nevertheless, we do spend a good deal of our working lives with Aboriginal people, and we felt some obligation to communicate some of our experience with people in the churches. In Chris's case, that includes decades of experience with Indigenous people in remote Australia.

There is another difficulty about the agenda for today – which is trying to work out the difference between the two major parties when Labor seems so unwilling to articulate its difference.

There was a hint of a difference in the very brief discussions in the media about the significance of the UN Declaration on the Rights of Indigenous Peoples. This was passed by the General Assembly on 13 September this year, and the Australian Government distinguished itself by being one of only four countries who voted against this historic document. The other three countries were Canada, New Zealand and the USA.

The Victorian Traditional Land Justice Group issued a media release on the UN Declaration noting that among the four countries who voted against it, only Australia has never entered into treaties with their First Nations. Robert Nicholls, a co-chair of the Land Justice Group, observed that this makes Australia uniquely backward in the international context.

The Australian Government refused to sign the UN Declaration on the grounds that it might give some credence to ideas of self-determination and customary law. It would be hard to imagine a more mean-spirited response to an international statement of aspirations.

The federal Labor Party stated, on the other hand, that they would have no difficulty becoming a signatory to the UN Declaration should they win Government. Their media release, however, then went on to speak about practical measures around health, education and policing.[1] In other words, the Labor Party interpreted this new international standard largely in terms of the rights of disadvantaged citizens. In short, the difference between the two major parties may not be that substantial after all.

Of course Aboriginal communities need substantial new initiatives in health, education and policing, but we didn't need a new UN Declaration to establish matters that sit within the framework of citizenship and human rights. The point of the 20 year United Nations process

[1] http://www.alp.org.au/media/0907/msia140.php; for the Australian Government's statement at the UN on 13 September, see http://www.undemocracy.com/generalassembly_61/meeting_107#pg018-bk04

was to discover the *distinctive* aspects of Indigenous rights beyond common citizenship rights.

Not every citizen has lost their traditional lands and resources. Not every citizen is asked to accept the position of the Australian judicial system that those who have endured racist policies before 1975 have no redress available to them. That is the date of the *Racial Discrimination Act,* and that is the date from which compensation becomes available under the *Native Title Act.*

The UN Declaration on the Rights of Indigenous Peoples, Article 28, proposes a different view of justice:

> Indigenous peoples have the right to *redress*, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
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> Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status, or of monetary compensation or other appropriate redress.[2]

This is where policy thinking should be focussed. As Pat Dodson recently pointed out, we have not even begun to have genuine conversations about a political settlement for invasion, dispossession and historical injustice. And until we have those conversations, Australian nation building will be burdened by a bad conscience.

Australians seem to have no difficulty making the sacrifice of the ANZACs part of our national identity, but we seem to have no public conversation about how to incorporate the sacrifices of Indigenous peoples. We have no substantive discussion about the political praxis of repentance, other than to make one-off apologies that lack the substance of redemption.

Redemption language, of course, arose in the Hebrew Bible in the context of legal discourse about the restoration of alienated family members (people who had been sold as slaves) and the restoration of ancestral lands. Leviticus 25 even took the bold theological step of arguing that the alienation of rural ancestral lands was strictly speaking *impossible* since the ultimate land owner is God. Jubilee legislation might be thought of as an ancient Israelite version of native title, since it requires the return of ancestral land to traditional owners – although the Levitical version of redemption is probably superior in almost every respect.

One of the problems with native title is that it is currently seen as a burden on the Crown, but it is precisely the legitimacy of the Crown that is at issue for traditional owners.

In the course of researching my new book on postcolonial theology, I was heartened to read about Christian leaders in the 19th century who similarly questioned the manner in which Australia was claimed on behalf of the British Crown. In 1845, for example, Bishop Polding expressed his view to a committee of the New South Wales Legislative Council that Aboriginal resistance

> must be attributed to the bad feeling and want of confidence naturally caused by the mode in which possession has been taken of their country – occupation by force, accompanied by murders, ill-treatment, ravishment of their women, in a word, to the conviction on their minds that the white man has come for his own advantage, without any regard to their rights – Feeling this burning injustice inflicted by the white man, it

[2] http://www.undemocracy.com/A-61-L.67.pdf

> is not in the nature of things that the black man should believe the white man better than himself, or suppose the moral and religious laws, by which the white man proposes the black man to be governed, to be better than those of his own tribe.[3]

What has sometimes been insufficiently recognized is that the views of people like Polding echoed concerns that emanated from the Colonial Office in London in the 1830s and 1840s. A group of powerful evangelical Anglicans in the British parliament, supported by some influential Quakers, had tirelessly worked for the abolition of slavery in the early nineteenth century, and especially after the *Emancipation Act* of 1833, this group focused their humanitarian attention on Aboriginal people in the colonies. Following in the footsteps of William Wilberforce in the campaign against slavery, it was especially Thomas Buxton, James Stephen and Lord Glenelg who concerned themselves with the native peoples of Southern Africa, the Carribean, Australia and New Zealand.

Buxton's lobbying resulted, for example, in Lord Glenelg's famous depatch to Governor D'Urban of the eastern Cape in December 1835 renouncing the annexation of Queen Adelaide Province on the grounds that 'the original justice is on the side of the conquered, not the victorious party'.[4] Expressing related concerns to the South Australian colonial Commission in same month, Lord Glenelg stated:

> Before His Majesty can be advised to transfer to his subjects the Property in any part of the land of Australia, he must have at least some reasonable assurance that he is not about to sanction any act of injustice toward the Aboriginal natives of that part of the Globe. In drawing the line of demarcation for the New Province… the Commissioners therefore must not proceed any further than those limits within which they can show, by some sufficient evidence, that the land is unoccupied and that no earlier and preferable title exists.[5]

It was this kind of thinking which lay behind the settlement of New Zealand, and the Treaty of Waitangi in 1840 was a natural consequence, but the *South Australian Constitution Act* of 1834 had already denied the possibility of native title by declaring that the land was 'waste and unoccupied', curiously echoing the King James translation of Genesis 1 where the earth before creative differentiation is described as 'waste and void'.

There is no doubt that Thomas Buxton's group was motivated by religious convictions, although the ethical sources of their thought were not exclusively biblical. For example, after Select Committee inquiry in 1835-36, Buxton expressed the view that all native peoples have 'an *inalienable* right to their own soil', an idea which cannot be derived straightforwardly from the Bible.[6] Similarly, William Ellis, a representative from the London Missionary Society, put his view to the Select Committee that colonization should never have involved 'the expulsion or annihilation' of the people whose land is seized.

> It has been our custom to go to a country, and because we were stronger than the inhabitants, to take and retain possession of the country, to which we had no claim, but to which they had the most *inalienable* right, upon no other principle than that we had the power to do so. This is a principle that can never be acted upon without insult and offense to the Almighty, the common parent of the human family, and without

[3] Reynolds, *Law of the Land,*pp.159-60, quoting from the *NSW Legislative Council Votes and Proceedings*, 1845, p.9.
[4] Quoted in Reynolds, *Law of the Land*, p.98 from the *British Parliamentary Papers* 1836, 39,279.
[5] Quoted in Reynolds, *Law of the Land,* p.106.
[6] Buxton quoted in Reynolds, *Law of the Land,* p.85. On the indirect relationship between the Bible and human rights, see especially Eckart Otto, 'Human Rights: The Influence of the Hebrew Bible' *Journal of Northwest Semitic Languages* 25 (1999), pp.1-14.

> exposing ourselves, sooner or later, to the most disastrous calamities and indelible disgrace.[7]

It was the language of the Enlightenment that suggested human rights were 'inalienable', although I would like to think that the Levitical law of Jubilee lies somewhere in the genealogy of ideas. While there are some important analogies between biblical laws and human rights, the confluence of these legal ideas in the nineteenth century are very different from what we find amongst the Conquistadors or the Puritans who could see themselves as a 'new Israel' – disregarding the land rights of indigenous people with warrants drawn from Deuteronomy and Joshua. Nevertheless, Australian is not entirely free of Deuteronomic attitudes.

Unlike other countries within the legal environment of the Common Law, Australian Governments have so far adopted a curiously 'Deuteronomic' position in refusing to make a treaty with the prior inhabitants of our land base. On the contrary, our Governments have up until recent decades attempted to make these people disappear – by forcibly moving them from their traditional countries, by undermining their kinship systems and laws, by denying them citizenship, by withholding a portion of their wages, and by refusing to acknowledge them in national census data. These actions were smuggled firstly under the banner of 'Protection' and then under the policy of 'Assimilation'. Either way, the older and different forms of Australian identity were declared too foreign for the new national standards. *Terra nullius* may be a more subtle form of genocide, but it has been no less deadly than the laws in Deuteronomy that suggest the annihilation of the prior inhabitant of Canaan.

Prime Minister John Howard has repeatedly asserted that a nation 'does not make a treaty with itself'. But any presumption that Australia is undivided in its sovereignty – and therefore cannot make treaties with itself – would obscure the complex realities of our 'self'-government.[8]

There are different genres of sovereignty, not least because the authority of the Crown in Australian history has shifted from a British monarch to the will of a people whose national identity is now to be distinguished from its British indigenous roots. Federation gave birth to multiple levels of Commonwealth and State Governments all of which collectively represent the mysterious genealogy of British/Australian Crown. Apart from a federal Constitution that shares sovereign powers between the Commonwealth and the States', sovereignty is also divided between the parliament, the executive and the judiciary. In short, our multiply layered self-government is formed by a system of agreements between separate jurisdictions.

There is no reason in principle why indigenous jurisdictions cannot be added to the federated mix. A treaty is not the only instrument that could be used to establish the legal recognition and rights due to Indigenous people, but it is perhaps the most appropriate way of reconciling the competing sovereignties that beset our national imagination.

The ambiguities of native title jurisprudence illustrate just how problematic the issue of sovereignty has become. In the High Court's decision against the *Yorta Yorta* in 2002, it was asserted that any developments in Aboriginal law over the last two centuries are not relevant to native title, since the Court recognized 'no parallel law-making system' in territories over which the British Crown had asserted its sovereignty. This legal logic meant that Yorta Yorta traditional owners would only have been recognized as native title holders if they had maintained their legal system substantially snap-frozen from1788. This sets a standard of continuity in law and custom, and connection to country, that the Israelite traditions would certainly fail (cf. Weiner).

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[7] William Ellis, quoted in Reynolds, *Law of the Land*, p.95 from the *British Parliamentary Papers* 1837, p.510.
[8] Sean Brennan, Larissa Behrendt, Lisa Strelein, George Williams, *Treaty* (Sydney: The Federation Press, 2005), p.71.

You may be thinking, after this extended excursion into history, theology and sovereignty, that this is all just too abstract; big symbolic thinking is of no practical use to Indigenous communities in remote Australia who are obviously in crisis. But this is not an issue of either/or. Moreover, there is a legitimate question here about the extent to which the underlying causes of social disadvantage can be addressed by focussing on symptoms. For example, Prof. Ian Anderson from Melbourne University recently spoke about a Canadian study on suicide among Indigenous young people, showing that the number of youth suicides was lowest within communities who had the greatest control over their lives. In other words, the particular issue of suicide may be addressed by narrowly focussed interventions but also by consideration of broader issues like self-determination.

Commenting on the recent federal government intervention in the Northern Territory, William Tilmouth from the Tangentyere Council in Alice Springs recently said this: "If you can't have a say in your own life, it makes you feel like sitting down and doing nothing". There is a lot behind this statement, and its implications go a lot further than debates about the Northern Territory intervention.

Recent studies on the social determinants of health point in the same direction: the extent to which people have control over their lives has a large impact on health outcomes. This is now being called the 'control factor'.[9] This is one component among a range of psychosocial factors that can contribute to poor health and chronic diseases. Wide-ranging international studies are suggesting that psychosocial stress is a significant contributor to outcomes in health and education. In the case of Indigenous Australians, this could be called "cultural stress."

As Pat Dodson recently pointed out in Melbourne, "Governments have an elaborate machinery to deal with issues such as law and order, health, education, housing and welfare for all citizens including Indigenous people. However, it is the *structural* matters about including Indigenous Australians as a distinct peoples with special rights in Australian nationhood that has bedevilled this country."[10] He said that "new systems of regional governance need to be developed that include Indigenous people not as disadvantaged citizens but as communities which shape the cultural and social reality of rural and regional Australia."

The history of Aboriginal dispossession cannot be adequately addressed simply in terms of civil rights. The long-overdue discovery of native title has made this clear, and even the Prime Minister seems to have conceded that the Constitution does not acknowledge the special position of Indigenous Australians. Beyond the quest for equality, we need to get a grip on the meaning of Indigenous *cultural* rights and how significant these are for reconciliation.

Pat Dodson was, as usual, incisive on this point: "Despite the spin that the *Native Title Act* was a negotiated settlement between the Keating Government and Indigenous Australia", he said, "there was in fact no substantial dialogue about the most important issue that had confronted Indigenous and non-Indigenous people since the coming of the first fleet – the recognition in Australian law of the inherent rights of Traditional Owners."

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[9] Marmot, M. & Wilkinson, R. G. *Social Determinants of Health* (Oxford: Oxford University Press, 1999); Evans, R. G., Barer, M. L., & Marmor, T. R. *Why are some people healthy and others not?* (New York: Aldine De Gruyter, 1994); Yin Paradies, *A Review of the Relationship Between Psychosocial Stress and Chronic Disease for Indigenous and African American Peoples* (Darwin: Cooperative Centre for Aboriginal Health, 2004).

[10] Pat Dodson, 'Reconciliation – 200 years on is dialogue enough?', speech delivered at the Brunswick Town Hall, 10 October 2007.

Instead of narrowing the policy debate down on service delivery to disadvantaged communities, Pat Dodson is calling for a new and more authentic dialogue about nation building that is mutually respectful and pursues the highest standards of international human rights.

Pat has proposed a national conversation, but he also emphasized the importance of community mediation at the local level. An inter-cultural dialogue cannot be framed in terms that are dictated by the dominant society. He pointed to the Mawul Rom Project in East Arnhem Land as an instructive example of bringing people together in ways that are meaningful for both Indigenous and non-Indigenous cultures.[11] It was very interesting to hear him highlight this project since one of the key people in its formulation was the Aboriginal Uniting Church minister, Rev. Djiniyini Gondarra.

The Mawul Rom process is partly about reuniting younger Indigenous people with their own culture, but also includes a process of mediation with Non-indigenous people. Pat argued that localized mediation should be "re-inventing Indigenous and non-Indigenous relationships in this country. It offers spirituality and intelligence to live within the country and offers a lens through which modernity becomes relevant to the purpose of life."

Clearly, this is not just about re-vitalizing traditional cultures, but also about finding ways to link traditional Indigenous values with the various elements of contemporary life. Accordingly, local mediation would need to bring traditional owners into conversation with industry representatives, politicians, senior public servants, Trade Unions, Churches, Aboriginal academics and so on.

When asked whether the term 'reconciliation' is really very helpful any more, Pat said he understood some of the reservations that had been expressed about it, but given his Catholic background, it works for him.

I don't want to conclude here, just by making the obvious point that the church is in the business of reconciliation. Reconciliation also needs to be applied to the adversarial dimensions of party politics. I am encouraged that both John Howard and Kevin Rudd have started to consider Indigenous issues in bi-partisan terms. This is absolutely crucial, and not just because we will need bi-partisan support for any Constitutional amendments to succeed. These are issues that go to the heart of Australian identity. If Pat Dodson's vision can be taken to the next level, it promises to heal some of the cancerous wounds in the soul of the nation.

[11] 'Mawul Rom Project**:** Traditional and Contemporary Mediation and Leadership Training' http://ntru.aiatsis.gov.au/ifamp/research/pdfs/MawulRom_2004.pdf