

COMMENTARY

MY RELATIONSHIP WITH ABORIGINAL ARMIDALE

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Abstract: This is a personal reflection on seeking to enter into a relationship with Aboriginal Armidale. It is not therefore a scholarly article, but it will have scholarly elements. It will often use the first person, as uncomfortable as that is and should be in an academic context, because of the uncomfortable personal nature of this reflection. This reflection will be in three parts. The first part concerns how we got here and why it matters. The second part concerns how things could be so much better than they are, and the third part concerns what to do about it. The conclusion is that we need to create a more shared sense of community, in which everyone has a sense of dignity.

Keywords: Aboriginal; Armidale; dignity; personal reflection; shared sense community

I INTRODUCTION – HOW DID WE GET HERE?

I have been asking this question since I was 5 years old. I grew up in Inverell for my primary school years. That is Kamilaroi country. This is significant because much of Australia's Aboriginal population lives between Sydney and southern Queensland. The proportion of the population that is Aboriginal is not as high as places like the Northern Territory but, at about 9.3% in 2021, it is still notably higher than the national figure of 3.8%.

Walking home from school when I was in Kindergarten I was in a small group of children when we were confronted by an Aboriginal man with a knife. On reflection, he was probably drunk. He was angry and threatening. I stood behind the slightly bigger children and did not know what to do. I do not know how long this situation lasted before someone who seemed like the man's brother came from across the road and talked him into going back over there. I then walked home. My mother says that after that I would get down on my knees before walking to school and pray that the black man would not get me. I lived in fear of dark-skinned people until adulthood. There were many other threatening incidents where I was abused or chased, or I saw others engaged in fights and abuse. I

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heard much boasting from white men about the violence they had inflicted on Aboriginal people and from boys my own age about the violence that they would like to inflict. I heard many women speak with utter contempt for Aboriginal people.

My response was fear. I did not hate the man who confronted me nor feel any anger. I did not feel hate or anger towards any other person of colour. I had a profound sense though of a community divided, with much hate, fear, contempt and hostility on both sides, together with violence. The violence took the form of threats, bashings, rapes, riots and murders, from both sides. What I did not know until I went to university was why. I studied Australian history and spent time looking at microfiche copies of newspaper reports of the counter insurgency operations in the part of New South Wales in which I had grown up. The accounts were brutally candid, with no sense at the time that they occurred that they were anything other than what should occur. At the same time as I was growing up in northern New South Wales, the seventies and eighties, the white minority governments in then Rhodesia and South Africa were violently suppressing black insurgencies. Many white people came from there to live in our community and I heard their stories. I became fascinated with the parallels and very aware that the key difference was that white people where I lived were the majority. The conclusion that I have gradually reached over my adulthood is that we are still dealing with the consequences of the Frontier Wars. They have never been properly resolved.

II SOVEREIGNTY

Part of the problem is that we have never properly addressed the acquisition of sovereignty over Aboriginal people and the application of white law to them. In terms of the theory of the reception of English law into Australia affirmed in *Mabo*, English law can only have applied to Australia by treaty, conquest or occupation. There has never been a treaty. Occupation relies on the doctrine of terra nullius, which is to say that Australia was unoccupied and therefore English law applied by virtue of settlement. The doctrine of terra nullius is widely rejected on the basis that Aboriginal people did occupy the land and did have their own laws. Every Acknowledgement of Country implicitly recognises this. The problem is that our legal system still effectively applies the doctrine of terra nullius. This is because it only makes narrow exceptions to it with respect to native title, following *Mabo* in 1992,² and citizenship, following *Love v Commonwealth* in 2020.³ This then leaves conquest. Most Australians instinctively reject the idea that Australia was invaded but, if there is no treaty and we reject terra nullius, this is the only legal basis left. The consequence of this is that the common law would then recognise Aboriginal law as continuing on unless explicitly extinguished by a new law. Our legal system does

² *Mabo v Queensland (No 2)* [1992] HCA 23, (1992) 175 CLR 1.

³ *Love v Commonwealth of Australia; Thoms v Commonwealth of Australia* [2020] HCA 3.

not accept this either, but it would be a much better basis upon which to work towards a treaty settlement.

III THE CONSEQUENCES

Why should this legal theory matter? The reason is that Aboriginal people still suffer the consequences. Aboriginal people have a distinct disadvantage because, not only were they hunted down and massacred, but the law then actively discriminated against them. Under the *Aborigines Protection Act 1909* (NSW), in force until 1969, Aboriginal people were under the control of a Board which could remove them from the vicinity of townships, take control of Aboriginal children, and exercise complete control over Aboriginal reserves. There was a deliberate structural comprehensive state system which imposed disadvantage like it did for no other group in society.

In New South Wales the incarceration rate of Aboriginal people is now grossly disproportionate to the rest of the population and increasing. This just compounds the trauma and perpetuates it from one generation to the next. Incarceration is strongly related to significant disadvantage, to quote from the 2023 NSW Parliamentary Research Service Paper *Reducing Incarceration of Aboriginal People: Challenges and Choices*:

A snapshot of Aboriginal people in prison in NSW in 2020 highlighted the underlying drivers of incarceration and complex needs of this population:

- 42% receiving mental health treatment
- 82% had a current drug problem
- 33% had a current alcohol problem
- 13% were diagnosed with active psychosis
- 66% did not complete year 10
- 26% were in out of home care as a child
- 39% had a first custody episode before 18
- 92% had a prior custody episode.⁴

No amount of money or lofty words or ‘tough on crime’ policies seem to have reduced the serious crime problem amongst Aboriginal minors in northern New South Wales. It should not be hard to understand that if society does not seem to care about them then they might not care about society.

A Dignity

This leads to the question of dignity. There is ongoing law and culture among Aboriginal people in northern New South Wales. Culture and kinship preserve parts of the ancient ways. Our legal system does not recognise it and, beyond rhetoric, our society does not really value it. For a people that has been so marginalised and oppressed, it should not be surprising then that Aboriginal people feel that society does not care about them. It is in

⁴ Anita Knudsen and Lenny Roth, *Reducing Incarceration of Aboriginal People: Challenges and Choices* (Research Paper, Parliamentary Research Office, Parliament of New South Wales, May 2023), 11.

this there may actually lie a path for change. If there was a profound reconsideration of how we came to be in this position, how our law came to apply to a subject people and how those people came to be so disadvantaged by it, then there might be a way forward. It is not possible to change the past, but it is possible to admit what happened and to take responsibility for its consequences. If Aboriginal people were able to assert themselves in such a way that they felt valued by the rest of society and a part of it, it could just be possible that this would create more of something that money cannot buy, dignity. This leads to the question of what a better relationship with Aboriginal people could mean.

B *How Could Things Be Better?*

1 *Community*

Returning to my story of being held up at knife point when I was five, it would be grotesque to focus on my trauma when the ongoing trauma of Aboriginal people is infinitely greater. This is not a question of comparing traumas. It is a question of dealing with trauma together, as a community. My individual trauma is not at all significant, but the question of a divided community is, for all of us. This is the question that has stayed with me for the rest of my life. It could be so much better if every person could live in their community with dignity, and without a constant sense of dread, hate, fear and contempt. The rage of that man who held the knife has stayed with me. I realise now that I have never really forgotten and never stopped thinking about why he felt this violent anger. He did not know me, and I expect never to know what drove him in particular to feel that way. It did tell me though that something was profoundly wrong. It was not just his actions that told me that, but he expressed the most forcefully what was apparent in so many others – rage, contempt, fear and hatred.

I do not see myself as an activist, an ally or a social justice campaigner. I see myself primarily as a member of my community. I see my community as having a great deal to offer. The rule of law has made Australia such an attractive place to live for so many people. It has provided a fair go to so many, but Aboriginal people have not had a fair go. Australian society can and should be better than this. It should serve all of its members.

2 *The Rule of Law*

Guilt and shame should have a part to play. It is better to have a positive reason for change rather than a negative one, but part of admitting responsibility for what has occurred to Aboriginal people should be a sense of shame felt by other Australians. The brutal dispossession and ongoing disadvantage of Aboriginal people is shameful because it should be contrary to the values of a democratic society governed by the rule of law. It is not enough to deflect this shame on to the British because it is Australians who have done these things, the doctrine of terra nullius grew from Australian cases rather than a British declaration, it is Australians who are in possession of Australia, and it is Australians who must take responsibility. British people live in Britain, on the other side of the world. British people did not come here, dispossess Aboriginal people, and then all go home. The original British settlers became Australian. They were my ancestors.

This leads to the myth of decolonisation. Australia is very unlikely actually to decolonise. Every non-Aboriginal person here is a colonist, as we are in possession of the stolen property. As Australians we need to admit to this aspect of our presence here if we are to take responsibility for it. It could lead to a more honest and healthier relationship with Aboriginal people and also a healthier and more honest relationship with Britain, as the source of the culture of law and government which prevails in Australia and which has been so attractive to so many.

This leads back to the fundamental contradiction in the concept of the rule of law in Australia. Geo-strategically, Australia is facing its most profound threat since 1788. China is an authoritarian power set on changing the world around it to suit its values. As a liberal democracy this is fundamentally not in Australia's interest, so Australia's National Defence Strategy states that our aim is to uphold the international rules-based order which has served Australia so well for so long. Australia has not had to invest heavily in its own defence because it relied on Britain up to 1942 and since then the United States to project the power necessary for our defence. Britain is not the power it was and the United States is pursuing an America First strategy. This means that Australia has to do more for itself to secure a regional order which suits our values. The problem with arguing for a rule based international order, and the rule of law at home, is the fundamentally illiberal way in which Australians initially asserted authority over this continent without a clear basis in law. That the consequences of this remain so profound for Aboriginal people means that this is a contradiction that will not go away. Sadly, this also sits with Australia's history of blackbirding in the Pacific, effectively slavery, where Islanders were made to work on the sugar plantations of Queensland.

Whilst it is not possible to undo this history, admitting it and taking responsibility for the consequences is much more likely to have a positive effect than pretending it did not happen. It is clear that 238 years of the same approach has not worked. This would mean stating clearly that what happened was wrong and contrary to current Australian values. Australia would need to acknowledge, commemorate and, where appropriate, compensate. This would at least make Australia's message about the value of the rule of law and an international rules-based order more credible, and possibly give us more secure relationships in the Pacific and Asia. It would also affirm Australia's own best traditions.

This raises the question then of what our relationship with Aboriginal people can and should be. It appears to be tempting for some simply to identify as Aboriginal as a way of standing in solidarity, or to reject and stand aside from the oppression which has occurred and deflect responsibility to others. The difficulty is that this is another form of appropriation, in this case of culture, or a denial of responsibility. Part of the challenge for non-Aboriginal Australians must be in accepting the deeply uncomfortable identity of being the descendants, or at least beneficiaries, of those who dispossessed Aboriginal people. This seems to me to be a more honest and effective way of taking responsibility.

3 Culture

While non-Aboriginal Australians cannot be Aboriginal, it is possible to appreciate Aboriginal culture far more deeply. I hold traditional values of faith, family and community, living a life of service to each, and being bound by the cycles of nature and listening to those who have lived through more of them. I find this in the Aboriginal culture around me in Armidale much more than in Australian modernity. I understand that much culture has been held back from other Australians because it has been treated with such contempt for so long. This includes Aboriginal law and the extent to which it continues to operate even in Armidale. Given the history, Aboriginal people are likely to remain unwilling to share all of this knowledge but it is possible that over time that reluctance could lessen. If Aboriginal people could see their culture valued and even cherished by other Australians and the rest of the world, they may more be willing to share some more of it. We could then stand in awe of 60,000 years of culture and sustainability as our appreciation deepens. This could give us a renewed focus on relationships with the land and each other – as an antidote to the ills of modernity.

Another way in which things could be better is if we develop of a concept of shared – instead of stolen – sovereignty. A greater assertion of Aboriginal culture and law may be a more effective way of reaching an alienated youth who act as if society has no place for them. Aboriginal ways of addressing crime and punishment must be a serious alternative given that the current approach in New South Wales clearly has not worked. The prospect of addressing serious crime problems should be a strong motivation to try a different approach.

4 Clarity

Finally, it seems that Australians have a deep underlying concern about the legitimacy of their tenure over land. Native title makes many nervous that Aboriginal people will take their farm or their home. The drawn out and uncertain nature of native title claims only adds to this sense. The approach of the Yoorrook Treaty process in Victoria to making a comprehensive settlement of claims should give us a better way forward than this. Systematically addressing Aboriginal ownership of land, compensation for dispossession and Aboriginal participation in all government processes which affect them could have the benefit for other Australians of securing their tenure, and with it the legitimacy of our presence on this continent. A treaty process cannot solve generations of trauma and disadvantage, but it could at least provide greater clarity on the place of the various interests at stake.

It could be better for all of us if the school and hospital in Walgett functioned properly, if there were no attacks on motels in Moree, if more tourists came from around the world to see the Myall Creek Massacre Memorial, the Armidale Aboriginal Cultural Centre and Keeping Place, the national parks, and heard about Aboriginal astronomy, if native title claims were finally settled, if the Aboriginal voice amplified the regional voice on issues like the renewable energy rollout, coal mining, and gas projects.

C What To Do About It?

1 Regionality

It comes now to address the most difficult question of what to do about it. The ideas expressed here so far are conceptually hard, emotionally fraught and practically difficult to do anything about. Part of the problem is that most Australians live in the cities and most Aboriginal people live in the regions. This means that most Australians have not had much contact with Aboriginal people or culture in a direct way, but instead only through more abstract means like television. Aboriginal issues do not affect their daily lives, and many would have trouble understanding why Aboriginal people should have special treatment or acknowledgement of a particular disadvantage. Even for those in the cities who are sympathetic, such as the many in the inner cities who voted yes in the Voice referendum, they still may not appreciate how diverse Aboriginal Australia is, and how diverse regional Australia is. With at least 250 language groups, there is no one Aboriginal Australia. A national view can make it difficult to appreciate how concerns of Aboriginal people over health, education, housing, justice, land and the environment can have a very local context, with state and local government having the most significant role.

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This puts the UNE School of Law in a distinct, even unique, position. Armidale sits in the middle of a very Aboriginal part of Australia. It has the potential to focus on very local concerns where it is and, through its presence in many other regional communities, on the local concerns in those places. Quite separately, being the closest law school to the site of the Myall Creek Massacre puts it in a position to support the commemorations, as well as to engage with the descendants of both victims and perpetrators. The UNE School of Law is a special position to mark both the horrific effects of the Frontier Wars, and also that the rule of law did assert itself at least in the Myall Creek case.

Staff in the school have been building long-term personal relationships with members of the Aboriginal community in Armidale and the surrounding areas. Through this, it has been possible to take concrete steps towards the more abstract ideals of admitting what happened and taking responsibility for its consequences. So far this has led to following initiatives:

- *An Elders Yarning Circle* – so far this has occurred twice at the Armidale Aboriginal Cultural Centre and Keeping Place. The aim is to have four each year, one for each season. The approach has been to have key decision-makers in the community sit with Aboriginal Elders and listen to their concerns. The decision-makers have included the local state member of parliament, the mayor, local councillors, the UNE vice-chancellor and other senior executives, senior police, and academics. From this process key concerns have emerged over youth justice and the renewable energy rollout.

- *Youth Koori Court* – The current focus is now on getting a Youth Koori Court for Armidale. Armidale already has Circle Sentencing, whereby Aboriginal Elders sentence adult offenders. A Youth Koori Court would involve Elders in pre-sentence sessions with offenders who are minors.
- *Visits to the Myall Creek Memorial and the Keeping Place* – The School of Law has also supported the annual commemoration at the Myall Creek Memorial each year in June. Separately, it has also taken a bus on a day trip for staff to have a guided visit to the Memorial. Law staff have also had a specially hosted visit to the Armidale Aboriginal Cultural Centre and Keeping Place in Armidale, which contains Aboriginal art and artefacts, some of which are thousands of years old.
- *Myall Creek Symposium* – a number of times since 2018 the School of Law has co-sponsored an academic symposium at the Oorala Aboriginal Centre at UNE on the Friday before the commemoration weekend in June. This has attracted scholars from around Australia and has had increasing attendance and participation by Aboriginal people.
- *Curriculum change* – the School of Law is also looking to changing its curriculum to incorporate much more fully Aboriginal law and law relating to Aboriginal people. This idea is in its infancy but has the potential to make UNE a national leader in these areas.

IV CONCLUSION

Taking the abstract to the practical has meant taking a local, community-focussed, ground-up, relational, very long-term approach. This all relies on establishing and maintaining relationships and a sense of shared community, not the School of Law coming from the outside and being detached and unaffected by what occurs. Steps forward must be very incremental and with a knowledge that they are very provisional. Aboriginal people could lose trust in this process very easily, given previous experiences, and also have internal differences which can be unexpected. This nonetheless requires a deep conceptual appreciation of how the current legal system asserted itself in Australia and the effects of this, how Aboriginal sovereignty, culture and law have still survived, how diverse it all is, and how much all of us have to gain by working together, valuing our differences and also valuing our shared sense of community, a community in which everyone has a sense of dignity.

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