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Failure to act also criminal

by Noel Pearson

The Weekend Australian

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Many Australians have never met an Aboriginal or Torres Strait Islander, and only a minority count an indigenous person as a friend or work colleague. Indigenous Australians constitute less than 3 per cent of the national population. I am constantly told by non-indigenous people how they grew up without seeing or meeting any indigenous people.

If you want to see large numbers of indigenous people, you need to visit an Australian adult prison or a juvenile detention facility. In such places indigenous people comprise between 20 and 60 per cent of the inmates. Some prisons, such as Lotus Glen in North Queensland, are almost exclusively black.

Routinely, indigenous adults constitute about 20 per cent of the adult prison population and 40 per cent of juvenile detainees. These are extraordinary figures, but we have become numb to their meaning.

This has not always been the situation. A study of the pastoral industry in the Kimberley showed that in the early 1960s the rate of indigenous people in prison was lower than the West Australian rate. This accords with my own experience. There was nobody from my community in prison in the ’70s. Today there are scores coming in and out of prison.

Surely we have not unconsciously come to accept that indigenous people are innately predisposed to criminality. Is it then that the criminal justice system is slanted unfavourably against indigenous people, and the whole system works in a way that results in over-representation? This is the standard leftist allegation: that over-representation is the product of institutional racism.

I have two problems with this standard explanation. First, there is evidence that one of the problems with the criminal justice system today is that it is often too lenient towards indigenous offenders, especially when it concerns violence against other indigenous people (usually family members). The system may be compounding problems of social disorder in Aboriginal society by treating indigenous offenders as victims of deeper social and historical factors.

Second, while systemic bias might be an arguable explanation of the reasons for over-representation, it does not tell us what we can do to turn the problem around. And, please, do not tell me that social justice is the solution, because it is this very kind of policy and practical impotence that bedevils all attempts to grapple with fundamental problems such as Aboriginal crime.

I propose three starting points for a reconsideration of Aboriginal over-representation in the criminal justice system.

First, we must acknowledge the intellectual and policy failure of the Royal Commission into Aboriginal Deaths in Custody. Fifteen years after this extraordinary process, which focused on over-representation as the central problem, there are more indigenous people in prison today than at the time of the commission’s report.

Second, we must face up to the point made by Don Weatherburn, the director of the NSW Bureau of Crime Statistics and Research: Aboriginal imprisonment rates are the result of Aboriginal crime rates. We cannot keep trying to deny that offending rates are very high by focusing all discussion on underlying issues and the need for social justice.

Instead, we have to confront the breakdown of social order in Aboriginal societies, and we have to confront this problem as a problem of behaviour.

The Mayor of Hope Vale community, Greg McLean, characterised the solutions proposed by those lawyers and criminologists who focus on structural explanations rather than dealing with the behavioural causes of indigenous crime as follows: “They are now trying to decriminalise crime.”

Third, we must face up to a second point made by Weatherburn: much of Aboriginal offending is related to substance abuse.

In 2001, Queensland Premier Peter Beattie signed a landmark justice agreement aimed at cutting the rate of indigenous over-representation by 50 per cent within 10 years. We are midway through this agreement and there has been a 7 per cent increase.

Following an evaluation of the agreement, the Queensland Government tabled its response in Parliament a month ago. Both documents make for appalling reading. While there are statements to the effect that "there is still much to be done to address the rate of over-representation", there is no confrontation with the plain fact of failure.

There is no discussion as to why such a clear commitment, having not been met in the first five years, is going to be met in the remaining five. The most astounding statement was that the "Government must maintain momentum if it is to achieve the primary goals of the justice agreement". What momentum? Is it the same momentum that has seen an increase in the indigenous incarceration rate? This is disingenuous policy-making of the worst kind.

I strongly believe that the things the Queensland Government is doing will not reduce the indigenous incarceration rate, even if they are still in government in 2011. There are some policies – namely the Alcohol Management Plans – which have the potential to fundamentally attack this appalling problem of over-representation, but in relation to most everything else, the Government is kidding itself and the Queensland public that they will produce the changes that are desperately needed.

Allow me a final comment on the Palm Island matter. Without the capacity for evidence to be tested and new lines of inquiry to be investigated – such as the hypothesis set out by Tony Koch (*The Weekend Australian*, 23-24 December) – the review proposed by the Queensland Government into the Director of Public Prosecution's file on the death in custody on Palm Island will lead to an inevitable conclusion. This conclusion will be that the reviewers agree with the decision of the DPP, Leanne Clare, that there is no evidence in the file to prosecute senior sergeant Chris Hurley for the death of Mulrunji Doomadgee.

It is not what is on file that is of interest to those seeking justice in this case. It is what is not on file. The material that is on file is the product of a patently compromised police investigation. One would expect the file to be deficient if the compromised investigation was not remedied by alternative lines of inquiry pursued by the DPP.

Unless a reviewer is provided with the capacity to open new lines of inquiry and to test the existing evidence, it will be a waste of time.

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