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Grist to the legal machine

By Noel Pearson

The Weekend Australian



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Grist to the legal machine Policing must be owned and identified with by indigenous people who want to restore order and peace to their communities writes Noel Pearson 06 January, 2007.

THE Queensland Government has yielded to Prime Minister John Howard's advice that the review of the death of Mulrunji Doomadgee in custody on Palm Island be conducted by a person from interstate who is, and who is seen to be, independent. You don't get more eminent or experienced than former NSW chief justice Laurence Street. Acting Queensland Premier Anna Bligh's announcement of the Street appointment is therefore welcome.

It is imperative that the review be empowered to look beyond the compromised police investigation and be capable of pursuing further investigation of evidence.

When I visited Palm Island last month I thought there were three possible responses from this community to the travesty of the investigation into Doomadgee's death.

The first is despairing resignation. The second is an angry separatism born of the belief that there is no place for blackfellas in Australia. The third is an angry insistence that they are Australian and they deserve to be treated properly.

Given the depth of the grief and problems of Palm Island, which go back deep into Queensland's history of discrimination, the worst thing would have been if the people of Palm Island had gone quietly in the face of the workings of the state's justice system.

The question is whether Palm Island's response to the treatment of Doomadgee and his family is an angry separatism or an angry insistence that Australia delivers on the promissory note of the 1967 referendum: that equality of citizenship means there must be just treatment under the rule of law.

At last month's public meeting attended by Premier Peter Beattie, the leaders of Palm Island flew the Australian flag alongside the half-mast Aboriginal and Torres Strait Island flags. They had deliberated on the question of the flags, and were determined to make clear that they are Australian, and it is on the basis of this citizenship that they sought justice.

Martin Luther King insisted that the US live up to its constitutional promise to all of its citizens, including his own people.

I got a sense that the passionate young leaders at Palm Island have that same insistence of this their own country.

That same concern is shared across the political and social spectrum and is the reason why so many Australians have been galvanised by this case. The federal Minister for Indigenous Affairs, Mal Brough, was the first to urge Beattie to review the decision of

the Queensland Director of Public Prosecutions. Brough's extraordinary response was not a product of political calculation but a human response to the distress of the Palm Island people, and he shared this with the islanders' local MP and Labor Speaker of the Queensland Parliament, Mike Reynolds.

Conservatives, liberals and social democrats alike have high expectations that the legal system should deal properly with the death in custody of Doomadgee. The first priority in this case is that justice must be done in relation to Doomadgee's death.

The second priority is for this episode to be a genuine turning point for a better future for the people of Palm Island. Both the federal and Queensland governments have been variously engaged with this community on development agendas, but these efforts are patchy and one is not convinced that they will lead to change for the better.

Beattie needs to think beyond specific immediate initiatives that entail budgetary outlays which the state is or is not prepared to make. Rather, his Government needs to engage with the family and community leadership of the island to talk through an agenda for the future.

Only after a compelling agenda is established should the realities of available resources be considered. The commonwealth should be part of this agenda construction.

This reform agenda needs to be led by the people of Palm Island. This does not mean that governments should not be robust in their advocacy of reform policies with the islanders. For example, Beattie must be rightfully insistent on his alcohol management requirements. John Howard's policies covering employment and welfare reform, for example, must be on the table.

The thing is that the islanders must own the resulting agenda, and this means governments must avoid the post-war reconstruction mistakes of the Americans in Iraq - detailed in excruciatingly tragic detail by Bob Woodward in his book *State of Denial* - by unilaterally trying to implement a reform agenda. Too much of what Queensland correctly calls "partnership" and the commonwealth calls "shared responsibility" ends up as unilateral central planning.

Before I visited Palm Island I wondered whether there was a sufficient island leadership and I left convinced that there was. Young people such as Brad Foster, Alfred Lacey, Lex Wotten, Robert Blackley and Mayor Delena Foster are the tip of an iceberg of people who have that one requisite of leadership: they desire a better future for their children.

These are people with whom governments must engage to construct an agenda to do nothing less than to lay the foundations to heal Palm Island.

These leaders must find the means to rise above the fractiousness of a distressed community, and have the courage to lead their people out of victimhood with a preparedness to embrace new policies and to develop new thinking. The old politics and the old mindsets have not worked.

There is a larger implication arising from the Palm Island case. Governments must take stock of the policy failure that had led to indigenous Australians being over-represented in the country's criminal justice systems at even greater rates than at the time the Royal Commission into Aboriginal Deaths in Custody reported 15 years ago.

If I were Howard I would not rush to conclusions about what needs to be done about the failure of the royal commission, but I would recognise that the problem lies in the basic criminological model of the sausage machine of the criminal justice system as it affects indigenous people.

That is, everybody from police, to legal aid, diversionary programs, probationary programs, courts and corrective services all basically see the goal as ensuring proper, safe and fair procedures and facilities for the meat to get processed through the machine and turned into sausages.

Thanks to the royal commission's recommendations, procedures today are much improved and are less likely to lead to death in custody. In other words, the sausage machine is mostly compliant with occupational health and safety standards. But nothing is being done about stopping the meat being fed into the machine in the first place.

Diversionary programs, as criminologist Don Weatherburn, director of the NSW Bureau of Crime Statistics and Research, has pointed out, merely divert the meat through side funnels, which eventually feed back into the sausage machine. In other words, diversion just adds another rung on the ladder to jail.

Getting rid of certain sentences, such as those for less than six months, can be expected to have the same effect.

Almost all the academic and policy focus on indigenous criminal justice has been focused on making the most human-rights-compliant sausage machine. And there are those who daydream about simple solutions such as inserting a gate to stop people from being imprisoned. But where does this leave us? The last thing communities want is offenders left to continue wreaking destruction.

The sausage machine paradigm exists because there has been an unwillingness to tackle the immediate behaviours that give rise to offences, such as substance abuse, abandonment of personal responsibility for one's actions and for one's family, disrespect for neighbours and disregard for the social standards that must necessarily exist if a community is to be functional. Functional communities are functional because of the social norms observed by the majority of people in these neighbourhoods.

Police enforcement is just a buttress to the power of these social norms. Police enforcement is only necessary when individuals offend against the socially expected behaviours of the community.

Social norms must be rebuilt where they have fallen into disrepair.

Policy-makers must understand that dysfunctional communities need to restore social norms. Policing is part of the process of supporting social norms, it is not an object in itself.

Finally, if I were Beattie I would not rush to conclusions about what needs to be done, but I would think carefully about the need to rethink policing as it affects indigenous communities. Contrary to what might be assumed to be a conclusion from the Palm Island case, policing needs to be more, not less, active. But it must be a policing that is owned and identified with by indigenous people who want to restore order and peace to their communities. It must be a policing that has as its objective the restoration of social norms.

Only by restoring social norms in communities and neighbourhoods will the problem of over-representation in the criminal justice system be turned around.

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