

Rights of indigenous women and children must come first

By Larissa Behrendt

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THERE is much evidence to support the assertion that stereotypes of Aboriginal women as bad mothers and promiscuous women exacerbate their treatment in court. The reliance by perpetrators of sexual violence on what has been termed a "customary law" defence has raised arguments from the bar table, accepted by the bench, that rape in Aboriginal culture is not treated as seriously as it is in Western culture. In December last year, the Northern Territory Court of Criminal Appeal increased the sentence of an Aboriginal elder who had raped a 14-year-old Aboriginal girl. During the trial the defence had argued that the man had not been aware of the fact that it was against the laws of the NT to rape a woman, and instead the judge had decided that the man had honestly believed that he was entitled, under customary law, to take her as a wife and to sodomise her. He had given a one-month prison sentence in the first instance and this was increased to three years and 11 months, with 18 months minimum to serve, by the appeal. This is not the first time that a trial judge has shown leniency to criminal behaviour against Aboriginal women by giving more weight to the "customary law defence" of older men than to the rights of the young girl who has been violated. It should be stressed that in other cases, Aboriginal women have strongly contested the misogynistic views put forward by defence lawyers — and happily accepted by magistrates and judges — and instead, these women assert that under our traditional cultural values, Aboriginal women are treated with respect, crimes of sexual assault are treated with great severity and that it is only since the sexism of the colonising culture was imposed on us that Aboriginal women were treated as inferior. Colonial notions that Aboriginal women are "easy sexual sport" have also contributed to the perception that incidents of sexual assault are the fault of Aboriginal women. The result of these messages to Aboriginal women by their contact with the

criminal justice system would only reinforce any sense of worthlessness and lack of respect that sexual assault and abuse have scarred them with.

The statistics that link sexual abuse with drug abuse also relate to low socio-economic living standards. It is for these reasons that much careful analysis should be given to the recommendations of the royal commission on Aboriginal deaths in custody. The report noted that the overrepresentation of Aboriginal people in custody was because indigenous people would be convicted and given custodial sentences for crimes that non-indigenous people would not be charged with — namely, public order offences such as drunken behaviour or offensive language. In these circumstances, it was recommended that alternatives to imprisonment be explored. Nowhere in the royal commission report was there a recommendation that offences of a serious nature should not be given serious punishment and it is with much concern that we see a general trend to try to avoid or lessen custodial sentences for any crime where the offender is indigenous.

In matters of sexual assault, it sends the wrong message to not impose harsh sentences for offenders, especially those who prey on children. These serious offenders were not the prison population that was to be targeted in reducing the overrepresentation of indigenous people.

I am a Eualeyai and Kamillaroi woman. My nation is matrilineal and our creation spirit is female. As a child, I attended political meetings with my father and watched as the men postulated and shouted and then, in the end, the women would have the final say. I look at women whom I have grown up admiring, such as Marcia Langton, Pat Anderson, Roberta Sykes, Mum Shirl and Norma Ingram, and I did not see victims or submissiveness. I saw women who understood that they are the backbone of our communities and I grew up respecting them and I feel that this was a strong cultural value imbued in me.

I was shocked as I began my professional career working in indigenous affairs to see the level of sexism that pervades

Aboriginal politics and it only increased my admiration of the strong Aboriginal women who lead our indigenous communities who continue to insist that mistreatment of women is not acceptable under any circumstances.

At the same political meetings, I heard a lot about our rights. I grew up understanding that we have a right to our sovereignty, our self-determination, access to health, access to education and freedom from racial discrimination.

We often claim that we have a whole range of rights that are not recognised and protected by the Australian legal system. For this reason, it makes no sense that we claim all of these rights that are long recognised as inherent in every human being, only to ignore them when that human being is a young girl exposed to great physical, mental and emotional danger. There is no reason our cultural values cannot conform to respect basic international human rights laws, and they should and must.

And if it is a matter of balancing the cultural rights of an old man to take a child bride against a child's right to be free from physical, sexual, mental and emotional abuse, I think the latter has to win, every time. If we are to ensure the continuation of our nations and our cultures, we need to make sure that the rights of our children are protected first and foremost. Our elders should know better.

Giving light sentences to perpetrators of sexual and physical violence against children not only gives comfort to the criminals that their behaviour will be protected by the white legal system, it sends a terrible message to our young people of how little that system — and their own people — value them. Hiding behind "traditional culture" to justify the actions is an insult to the victim. The NT court was right to increase the punishment to better suit the the crime.

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