Landscape of Violence

I fell over in the Yarra River up Warburton way and broke my hand. That event was a stroke of good fortune as, unable to drive for two months, I had to catch the bus to work.

Since everybody gets the 901, the trip between Aqueduct Road and Epping Plaza was a sociological experience, rich as any dream. It's a handy thing not to have to drive. I can overlook the landscape from the seat and the gum trees line the road and top the hills away out to Kinglake and there is mist in the valleys in the morning. The road was not always here of course, and a short 200 years ago, the Aboriginal people from hereabouts had the songlines to follow for any journey they might take and the stories of the songlines revealed to them not merely where to go, but also who they were and exactly what it was they had to do and they did not need a bitumen road. Who am I? What am I supposed to do? The road does not offer me that knowledge and by reason of the violence of my forbears, the songlines associated with Watsonia North and with McDonald's Road South Morang are now forever lost.

Teenagers pile on the bus, often enough at the wrong door though which the elderly are trying to pile out. Up the back where I am, there's the bloke on the mobile phone, firming up the drug deal. There's another bloke over the isle, gaunt in his singlet and cap, abandoning McDonalds stuff on the seat when he gets off at Epping. The teens up the back with us, leave the middle seats to the

women with the kids, among whom is the young woman in the hijab. Among the preponderance of f-words drifting down from the back, she darts a glance here and there, her eyes toward the floor, though the teens round me have eyes for themselves alone.

There are cameras on the bus. A sign warns us of the presence of the cameras. There is the driver. He's in a cage. And the cameras on the bus look at me and the driver in the cage is no longer one of us and the cameras look also at the women in the middle of the bus and the women look at the children, '...shaken by secret shudders and dark forebodings; but... know no way out, and very few persons indeed draw the conclusion, that this time, the issue is the long-since forgotten *soul of man*.' 1

What in the State of Victoria, has happened to the soul of man? There is foreboding in the faces of the women right enough, which the signs and the cameras and the cage do not assuage, but testify to the lack of the manifestation of the soul of man, with any sort of transcendence.

At Victorian Aboriginal Legal Service (VALS), till recently, I ran the civil practice. I submit, Commissioners, that the story of the bus is the same story told in the filing cabinets of that service, and also the filing cabinets of the Whittlesea Community Legal Service, where I am a solicitor these past two years which is why I go out of my way to mention it. Occupying a draw or two

¹ Memories, Dreams and Reflections: C. J. Jung, 1961 Fontana Paperbacks p. 365

in the filing cabinets, are stories of crime, yes, and there is debt also. Out here in the 'growth suburbs', there is also the stress of the mortgage and the troubles of the young ones with infringements and bills for their mobile phones and there are the routine troubles of the school. But the bulk of the cabinets devote themselves to another story. It is a story of violence in the family. To be more particular, I mean subjection to oppression and contempt, the exercise of arbitrary power and every kind of intolerance. It is not the husbands and the brothers who come and tell us that story. It is the sisters and daughters and the mothers who are telling it.

Our Family Violence worker talks to these women also and she says that more referrals² are made for women from Victoria Police to the regional family violence service up here in the in the Whittlesea municipality, than from any other municipality in the Northern Metropolitan Region. Given what I see in the interview rooms, that rings true, and there are limits to the help we can offer.

In the 90's, almost everyone appearing at court was represented. Legal Aid was widely available. The presence of counsel around the court and at the bar table was of assistance to the clients, as was clearer advocacy offered to the tribunal, about the client's proposals. There were no cameras and security guards and signs or glassed in registrar's desks and there were no closed doors and single entries to the courts and if you wanted to pop out in the court yard to

² 3.618 referrals

Royal Commission into Family Violence – Submission of Chris Howse catch up with the client, or to have a smoke, you didn't come back in through a metal detector.

Now, the judge and the magistrate giving order and direction to the public's journey is caged in also and protected by the guards and the cameras. In place of the multitude of counsel in which we used to seek safety, there are fewer of those and there are the metal detectors and the guards and the narrative of the devices and the signs and the guards is mistrust of the people who come to the court because there is a danger now that the people might run amok. In the interview rooms of the Victorian Aboriginal Legal Service and the Whittlesea Community Legal Service, the women tell also of mistrust. They are uncertain that the courts will serve them. Representation is hard to come by these days while the law and the courts maintain their complexity for the women who need them, such that the courts are largely impenetrable to the women and represent an expedient that is insufficient for recovery of the lost souls of their men.

From 1994 to 1999 in the Northern Territory, I appeared as counsel in all jury trials which came my way, where I worked for the Aboriginal Legal Service, a thing I'd started to do at the bar in Melbourne. There were contested hearings at bush courts across the Territory as well as in Darwin, which experiences furnished me with a knowledge of crime in the Aboriginal world. In particular, violent crime. Because I got about a bit in the bush, I got also to meet the locals and the Countrymen of Ngukurr, of Borroloola and of Oenpelli,

Groote Eylandt, Maningrida, of the Tiwi Islands and of other places also. The countrymen welcomed me and I got to sit down and talk with them and in time, accepting offers to watch with them under Arnhem land stars, I saw the ceremonies and heard the songs they have sung these 40,000 years.

From 1999, for the next eight years, I was Executive Officer of a committee³ to advise the Government of the Northern Territory upon its progress in implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody. By agreement with the Northern Territory Attorney General, it became my brief also to appear as counsel in any coronial inquest into the death of an Aboriginal person in the Territory, be that a death in custody or otherwise. Because Aboriginal women were being hit and injured by their partners and particularly since they were being killed, it was my duty to seek solutions to the problem of family violence among Aboriginal women of the top end. I set about it with energy and ran soon enough, into difficulties...

At about 6:00 pm on 20th January 2003 at about 6:00 pm, Sgt. Moseley came upon Anne Chantell Millar in the Smith Street Mall in the centre of Darwin. 'The first time Gregwyn hit me,' she confided to Mosley, 'was in early November 2002. I don't remember the date or much else about that day, because since then he has hit me so many times. I do remember that he started arguing with me about something. He then got very angry and started punching

³ The Northern Territory Aboriginal Justice Advocacy Committee ["AJAC"]

me. I remember that when I fell to the ground he started kicking me with his steel caps. From this time he has beaten me up more than 10 times, there are too many times to remember how many or remember where and when each time was.... Sgt. Moseley took out a Domestic Violence Order against Chantell Millar's boyfriend, Gregwyn Green, which included terms that the defendant Green must not assault Anne Chantell Millar, be provocative to her or approach her directly or indirectly.

Police General Orders remind officers of the difficulty that Aboriginal women from remote communities have in reporting and prosecuting assaults, of the sensitivity of the issue of violence for the shy bush women. So the orders advise police to take action having 'due regard to the cultural context and the special interests of female Aboriginal persons.' Consideration is to be given to whether or not bail ought be granted. The applicable order for police to follow in this instance, was General Order D7. In a nutshell, it said you've got to see the woman is safe.

Anyhow, on three occasions following Millar's Domestic Violence Order being taken out against Green, witnesses saw him belt up this woman, kicking her, punching her. Sometimes police saw it themselves. Evidence showed virtually no heed paid to the fact that this woman was in danger, was afraid of Green and, being a bush woman, was going to find it tough to talk about this to

Royal Commission into Family Violence – Submission of Chris Howse anyone, let alone a stranger in a uniform who is male into the bargain. Green

committed against her, he killed her. I sought leave to appear in the public

continued to hit Miller and get bail. While on bail for the offences he'd

inquest in which police tendered, a 'Violent Crime Reduction Strategy'.

Police relied upon the 'Violent Crime Reduction Strategy' their counsel submitted, to deal with the problem of family violence. This was a farce. For one thing, incontrovertible evidence established the fact that black women were victims of family violence in vastly greater numbers than white women. Yet the police 'Violent Crime Reduction Strategy' made no attempt to tailor strategy toward helping the black women. It made no comparisons whatsoever between white women and black women as victims of family violence. In fact, it didn't mention black women at all. Police strategy was accordingly ineffective in preventing violence towards Aboriginal women. That was crystal clear.

The Coroner set the matter of Millar down for final submissions and counsel assisting him argued that the Coroner should do no more to fix the problem of police sloppiness than tinker with internal protocols. I disagreed.⁵

MR HOWSE: ... it's not only police in the street who by and large honour these general orders in the breach. But there is a mindset at the highest levels of senior policing to the effect that this will take place... Now that's a big call, and the evidence for that call to be made comes from the three inquests...

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⁵ Inquest into the death of Anne Chantell Millar [2005] NTMC 056 Transcript p. 172 and following

'HIS WORSHIP: You're suggesting and I'll consider it, that one death's one death, two death's another. But by the time you get to the third one like this, I should amplify my comments and recommendations and loudly proclaim them in a way that maybe is not as subtle as I've tried - as previously.

MR HOWSE: That would be of immense assistance and it would be appropriate in these circumstances. ...although the [Police] Violence Reduction Strategy did not mention how many white women were dying from domestic violence in the NT from year to year, I could take a punt and say the number was zero. One hundred percent of women who die in this context in the NT are black. That could be the working proposition, and ninety percent of the women who are hit by men are black. That could be the other one. This is what the figures in the strategy document suggested, so how come it did not come right out and state the aim it ought to have had: We have got to stop the Black women being hit and killed. ...this strategy is ...going to fail as a solution and your Worship ought to reject it as a solution.

HIS WORSHIP: The strategy's going to fail because it should be more tailored to Indigenous people and should reflect that fact.

MR HOWSE: Yes.'

Information about Aboriginal people, marking progress of disadvantage for better or for worse, remained hidden in police files. If published annually, it might stimulate debate and form an agent for change. Accordingly, I asked the

coroner to recommend that S.28 *Public Sector Employment and Management*Act be amended to mandate a dedicated portion of the annual report of the Police to Indigenous disadvantage. The coroner expressed enthusiasm.

HIS WORSHIP: And I know that Mr. Howse would be encouraging me to make those waves. He wants me to. He wants me to - I remember the state Coroner of Victoria when I first became a Coroner saying, 'Look, really changing governmental attitudes, departments and ships of state, if you come out the first time and get on a soap box because you're 'unsackable' and you've got a forum and criticise bluntly those kinds of ships, they'll all turn their back on you, won't take much notice of you because there's no mandatory requirement for Coroner's recommendations to be taken seriously' and they won't. So you're subtle, subtle.

And then if it happens a second time, you are less subtle. If it starts to happen a third or fourth time, then you just get - you just go bang, bang, bang, wham, wham, wham and make sure it's on the front page of the local newspaper. That's his comments. I'm not like that. But I certainly had not come here this morning - and this is refreshing to have Mr. Howse. He usually refreshes me and he's really said, 'Hey, you've got to look at the three things, not just one now because this is not good enough'.

In the months that passed between the date of my submissions and the handing down of findings, the Coroner's enthusiasm waned.

'Mr. Chris Howse submitted inter alia,' the Coroner held,⁶ 'that I make various recommendations concerning legislative changes to the *Police Administration Act* and the *Public Sector Employment and Management Act*. I decline to do so as I believe that such recommendations are outside the scope of my jurisdictional powers. I make no comment as to the validity or substance of submissions. Mr. Howse also submitted that police General Order D7 is by and large, honoured in the breach in dealings police have with itinerant Indigenous women. He pointed not only to the evidence in this inquest, but to my findings in the deaths of two indigenous women, vis. Reba Lakuwanga and Valerie Wurramara. In both these inquests, I found it necessary to criticise police in their performance of duty in relation to Aboriginal women and domestic violence general orders.

Disturbingly, I find it necessary to criticise police once again in the same way. I do not adopt the broad generalization made by Mr. Howse. However the evidence in this case reveals that the actions of police were simply not good enough in relation to the enforcement of the DVO supposedly protecting the deceased. I very much put all the weight of my office behind the recommendation contained in paragraph 55 hereof.'

The only recommendation regarding the proper enforcement of police protocols regarding domestic violence was to the effect that *the Commissioner*

 $^{^6}$ Inquest into the death of Anne Chantell Millar [2005] NTMC 056 file nos. D0039/2003 delivered on 2 September 2005 pp 26-27

reinforce in every way possible the importance of compliance by police with General orders pertaining to domestic violence.⁷

Sitting down around the table in the library at Aboriginal Legal Aid Service, I told the AJAC committee what happened. 'This is the third time an Aboriginal woman has died when police ignored their standing orders and I think the Coroner has got it badly wrong.'

'What did the Coroner say?'

'He said "You're suggesting and I'll consider, it that one death's one death, two death's another. But by the time you get to the third one like this, I should amplify my comments and recommendations and loudly proclaim them in a way that maybe is not as subtle as I've tried - as previously." But he's ended up being subtle again. Instead of recommending any kind of change in the law to tighten up discipline on police or to make information public about Aboriginal disadvantage, he's just recommended that senior police tell the junior ones to try harder.'

'How come he didn't make the big changes you asked him to?'

'Well he indicated at the hearing a concern that too strong a criticism might result in the outcome that "they'll all turn their back on you, won't take much notice of you because there's no mandatory requirement for Coroner's recommendations to be taken seriously". He didn't say enough for me to be sure

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⁷ Ibid paragraph 55

whether he really was afraid of not being taken seriously. But he said enough for me to reckon we can appeal his decision. He refused to make the changes I asked for on the ground that they were "beyond the jurisdictional powers of the Court," without giving any reason why one of the widest discretions known to the law, ought not allow him to do, what I submitted he ought to do. Since women were dying and we think concrete changes can be made to stop such deaths, we'd better appeal.'

'Go ahead.'

I looked up the cases and thought an appeal might indeed have legs, and rang up John Langmead SC, a senior barrister in Melbourne with a view to sending him a brief to advise on the law. 'John, I might have to tell a Coroner to go to blazes and I need to know if the law will support an appeal.'

'What's happened?'

'Three inquests in two years have dealt with Aboriginal women dying at the hand of men they know, in circumstances where the police ought to have known there was trouble brewing and contrary to their standing orders, failed to look after the women.'

'So what do you want?'

'Can you do me up a brief to advise on the law, setting out whether we can attack this decision on the basis that it's an unreasonable refusal to exercise the discretion, given all the evidence?'

'Chris, I hate to do myself out of a brief fee, but listen. Let's say you get this thing to the Supreme Court and you win. That will take you how long? Six months? At least. A year? More likely. And then the Coroner makes the recommendation you want to the Attorney right? Why don't you go straight to the Attorney and cut out the middle man? I mean he's the one you want to influence right? So go to the Attorney, and sock it to him.' When people complain about lawyers who think of nothing but money, I sometimes wish they could have a chat with a John Langmead, who puts justice on the table with the bread and the butter and leaves the jam for somebody else to scramble over.

I went to the Attorney, his office referring us to the Minister for Police, the hon. Paul Henderson MLA. Eddie Cubillo, the chair of our committee, he and I met with the Minister in January 2006. We put to him all the material raised at the three inquests into the deaths of Aboriginal women at the hands of their partners, in which I had appeared as counsel. We raised the topic of changing the law so that in this most Aboriginal jurisdiction, the NT, the Annual Reports of government departments ought to tell the public how many black women were victims of assaults compared with white. And how many black women are sexually assaulted compared with white. And how routinely each year, there are significant numbers of black women killed by their relatives while the number of white women killed by theirs is zero.

All this, we put to the Minister, should go in the Annual Report so that reliable information could be in the public domain, that would show the true picture of how bad it was to be an Aboriginal woman in this Territory, in order to spark real debate and real change.

Mr. Henderson wrote to us on 9 February 2006 saying: 'Both the Government and the NT Police agree with you that violence against women is completely unacceptable and we continue to address this situation as a matter of priority.' However, beyond undertaking to continue on with the 'Violent Crime Reduction Strategy' (i.e. continue with the status quo, since this policy was the peg upon which they were hanging their hat at the inquest), and amending the *Domestic Violence Act* to allow police power to issue Domestic Violence Orders themselves in some circumstances, the government was not interested in our proposals. The minister was certainly not persuaded by the argument that by letting the public have immediate access to hard information about progress or otherwise on indigenous disadvantage, was a good idea.

As for amending the *Domestic Violence Act* to allow police to issue orders themselves, I was informed by senior police that the only reason for this change was that Magistrates had complained too much of getting out of bed when on the 'duty Magistrate night shift', to issue these kinds of emergency orders. In the meeting, the Minister actually said to us that he had never received any feedback whatsoever from Aboriginal communities that police had misbehaved

in any way. He actually said that to Eddie Cubillo of all people, an Aboriginal man who was born here and grew up here and was a lawyer, who got feedback like that all the time. As did I.

At Parliament House, Eddie and I took the lift from the Minister's office to the ground floor and walked outside onto State Square and looked at each other. After all those efforts at securing concrete change to prevent regular deaths of black women from family violence, we were back to square one.

When I mentioned there are difficulties in the way of change, I meant difficulties like this. I returned to Victoria in 2007 and through my work with VALS, hooked up with the Victorian Aboriginal people and right away, found contrasts with the clients up north. Among Aboriginal people here in Victoria, there is a bitterness not found up north, where countrymen still possess their own land and culture still lives. When I pick up the phone in Victoria, no Aboriginal person on the other end would speak their own language. 200 years with us has wiped them out. None of my clients met on a ceremony ground to practice ceremonies. They've gone too. There is fury about that. There is fury also about the fact that the people have no even break in the white economy of the State of Victoria, and in the interview rooms, the punters would express that, in a way that is brisk.

All the while, family violence unfolds with injury, death and with grief in the Aboriginal community in Victoria, with response from the institutions charged

to provide equity, which is woeful. On a number of levels. For one thing, institutions charged with making laws, dispensing justice and providing services to those people, increasingly insulate themselves with the signs and the cameras and the cages, the guards and the guns and the 'on-line applications', so they no longer allow themselves to feel the fury. That honour is reserved to a dwindling number of shopfronts, who yet open their doors to listen, and whose funding is increasingly in question.

If 'woeful' is accurate, what procedural change might you, Commissioners, recommend, in order to turn this situation round? The terms of reference of this commission admit Victoria's response to family violence must provide practical recommendations to stop that violence. You are encouraged to examine strategies for the prevention of violence. Because you are entitled to have regard to Aboriginal and Torres Strait Islander communities, I am encouraged to say something about strategy.

If 'woeful' is right indeed (and after 200 years to sort things out with the Aboriginal public, this submission presses that the word is apt) then experience suggests that Parliament will not make better laws for the peace, order and good government of an Aboriginal public over the next 200 years unless procedure permits Aboriginal members to take their seats elected to that body, for and on behalf of their people. This is the experience of the Maori people of New Zealand, seats for whom are reserved for direct election to the legislative body

of that country, by the Maori people themselves. Should the Victorian Parliament establish a time table to invoke the restrictive procedures in the *Constitution Act* 1975 for its amendment to provide for dedicated Aboriginal seats in that body? This submission makes a case to say 'yes'.

And the education of the public? Man is born to few days, and full of trouble. Time and chance oblige him to bear up under a variety of vicissitudes, the list of which, does not seem to alter: 9

the whips and scorns of time;

the oppressor's wrong;

the proud man's contumely;

the pangs of despised love;

the law's delay;

the insolence of office;

the spurns that patient merit of the unworthy takes.

That ought to do it. Accordingly, in the middle of trouble to which man is obviously born, should lack of self-knowledge lead him to strike women close to him, it would appear a chief facet of education ought be to teach him to know himself, to understand his capacity for violence and yet appreciate his ability to recognise signs and tokens that lead him to another way. Our age offers messages that are mixed. T.V. and magazines do not emphasise self-knowledge.

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⁸ Job 14:1

⁹ This is Hamlet's list, from the 'to be or not to be' soliloguy

They offer success and fame as ideal. His dream, they suggest, ought be that it's spring every season of the year. As we've observed, the man goes on to find the year brings autumn and also winter. As do real dreams by the way, as any bloke taking time to write them down would understand. If TV, magazines and the cyber world shaping through in Victorian nurseries tug him towards pleasure, while experience contrawise, leads him straight to pain, is it really a surprise the man inclines to violence? Instructed as he is that he should insist on pleasure and take no responsibility to bear up against pain?

Can virtue be taught? If it can, that such education is needed, is trite to say. Indeed, enough people do say it tritely: 'Many improvements have been made to services, reports, for instance, the Hobart Mercury, 10 on the question of family violence. 'But', the Mercury adds, '...police can't arrest their way out of the problem. Nor can punishment of perpetrators stop all the violence... It is time for the community to take responsibility to establish a culture of nonviolence and gender equality, and to shape appropriate attitudes towards women and children... We need education strategies in schools.'

What kind of education? Does the Hobart Mercury condescend to particulars? Does anyone? If any pundit offers something new, this submission is unable to point to a modern instance. Let us suggest what education ought not be. It ought not be: '...education, which promulgates the old generalisations and

¹⁰ Hobart Mercury, 15 February 2015

says nothing about the secrets of private experience. [Where] every effort is made to teach idealistic beliefs or conduct which people know in their hearts they can never live up to, and such ideals are preached by officials who know that they themselves have never lived up to those high standards and never will. What is more, nobody ever questions the value of this kind of teaching.' ¹¹ If, as Carl Jung suggests, nobody does, this commission is encouraged to venture onto that new ground.

Were a schoolboy in Victoria to apprehend the following, may we incline towards a better way? 'Man has done these things; I am a man, who has his share of human nature; therefore I am guilty with the rest and bear unaltered and indelibly within me the capacity and the inclination to do them again at any time. Even if, juristically speaking, we were not accessories to the crime, we are always, thanks to our human nature, potential criminals. In reality we merely lacked a suitable opportunity to be drawn into the infernal mêlée. None of us stands outside humanity's black shadow. Whether the crime lies many generations back or happens today, it remains the symptom of a disposition that is always and everywhere present – and one would therefore do well to possess some "imagination in evil", for only the fool can permanently neglect the conditions of his own nature.' The question of how we marry this

¹¹ Ibid p.362.

¹² The Undiscovered Self, Carl Gustav Jung, 1958 Routledge Classics p. 67

Royal Commission into Family Violence – Submission of Chris Howse apprehension with the boy in the school yard, is a good one, and as this submission observed above, fully open for this commission to consider.

So I submit that solutions to the problem of family violence unfolding in the Aboriginal public of Victoria will be more likely found, were constitutional change implemented to alter legislative bodies in this State to allow Aboriginal members to be directly elected by their own people. Moreover, were changes to the curriculum of education in Victorian schools made, such that the children are introduced to the benefit of self-knowledge, rather than ethical standards up to which it is impossible to live, then propensity for violence may be better curbed among the rest of us.

Since at stake is nothing less than establishing, upon impregnable rocks, the trust of the Aboriginal people of Victoria in the institutions of Parliament and the courts in this State and, in the individual white and black, enlivening compassion, justice and apprehension of the long forgotten soul of man, I am inclined to take pains to explain my thinking.

Hope

I submit for the consideration of the Commission the following recommendations:

- 1. The Government of Victoria establish a time table with appropriate community consultation to amend the *Constitution Act* 1975 (Vic) to establish dedicated seats in the Legislative Assembly and the Legislative Council for Aboriginal people directly elected to those seats by the Aboriginal people of Victoria.
- That Government of Victoria amend the curriculum of Victorian Government Schools to cater for teaching of self-knowledge.