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First Nations Peoples – Truth & Justice Commissions

Introduction

As a Traditional Yorta Yorta- Dja Dja Wurrung owner, I'm proud and honored to be chosen as one of members of the Yoo-rrook Justice Commission. The gravity of this moment in history is one that I take very seriously. The knowledge, experience and cultural integrity that I bring to the Commission comes from over 50 years dedication and commitment to my peoples struggle for justice and self determination in Victoria. My life's journey and work have been strongly influenced by my family and by admirable leaders of the caliber of my great Uncle William Cooper and many other men and women who have contributed to our struggle for truth justice to become a reality. The establishment of the Yoo-rrook Justice Commission as the first of its kind in the Australian context gives us renewed hope in the journey ahead.

Our job as Commissioners is to examine and uncover the underlying causes and consequences of systemic injustices and the trauma and disadvantage that continue to be the legacy of our people today. A big call as many would agree and the magnitude of the task is equally challenging.

Conduct of Inquiry

The manner in which the Inquiry will be conducted is expressed in section 4. of the Letters Patent. It requires the Commission to provide a safe, supportive and culturally appropriate forum for First Peoples to tell their stories of past and ongoing injustices. We are required to enable our people to come forward as victims, witnesses and survivors of systemic injustices and, are expected to make sure that those experiencing present or recent injustice will be supported in a culturally appropriate manner. The Conduct of the Inquiry pays special attention to providing

- A friendly environment that has an informal and welcoming atmosphere**
- The Recognition of the story-telling style, and oral history, as a valid source of evidence**
- A Choice in how people want to participate either in person or by written statement, including presentation by poem, song or art and**
- Upholding people's Rights to free, prior and informed consent at all stages of the process**

The Conduct of the Inquiry also applies to the question of social and emotional well being. It needs to provide a culturally appropriate community outreach, and attention to mental health and counseling support. This is in recognition of the continuing trauma experienced by First Peoples in Victoria as a result of the lasting impact of the Colonisation. The community engagement section draws attention to consulting with local and regional communities and encouraging their participation in the process. Communicating regularly with the Victorian community about progress, and taking on board reports on community matters from the First Peoples Assembly are other requirements of the conduct section.

The Job Ahead

In the job ahead we are aware that coming to grips with past injustices is by no means an easy straight forward task. We are also mindful that it does have the potential to be a healing and unifying process. Hearing First Peoples 'stories and acknowledging the truth about their experiences is essential for justice and the healing process. It will also contribute to providing a foundation for more positive relationships between First Peoples, non-Aboriginal Victorians and the State of Victoria. To quote the words of the First Nations Foundation spokesperson, Ian Ham.

' If we are to measure ourselves in terms of our maturity as a society, then mature societies own the entire history. We don't get to pick the bits we like, we must own the lot. The fact that Victoria has stepped up to the mark to do this, by way of the Commission, shows a level of maturity that other jurisdictions can follow '(Sydney Morning Herald, 16 May, 2021).

These sentiments are reflected in the education pathway now being discussed in the revised Australian Education Curriculum. The inclusion of Indigenous history and Indigenous studies as a formal discipline in the teaching of Australian history needs to be included at all levels of the Education system. When we talk about Aboriginal history we are dealing with a timeline that predates Western knowledge systems by at least 60,000 years. It deserves nothing less than its rightful place front and centre of our education system.

Background to Truth Justice

The history of survival and the courageous leadership of our ancestors is something I have spent most of my life researching, teaching, and trying to emulate. These are cultural values that guide our continued struggle for justice in 21 Century Australia. I personally started the journey of learning as a young man full of enthusiasm, high hopes, and many dreams for a better future. I began the journey by listening to and recording the stories of my elders who lived on Cummeragunja and Maloga Mission (1874-Present). Their experiences of the impact of Colonisation left me with a profound desire for truth justice. Most of the stories I listened to had a ring of overwhelming pride and family spirit weighted down by a heavy regime of domination and control. This is the story of people's everyday life and

movements on and off the reserve as they struggled for survival, dignity and fairness against the odds.

Reserves were like the out-of-sight out of mind place of Aboriginal life in colonial Australia. They were close enough but isolated from settler society and watched over by an oppressive regime of control by an overlord/manager with tyrannical powers. The impost of the ideology of segregation, control and subjugation had no place in my understanding of humanity and care for my fellow human beings. I grew up with the compassion and care of my family and relatives who instilled in us a duty of care for others and a brother's sister's keeper philosophy. This always held us in good stead no matter what the odds may have been. I also grew up in an era when the Universal Declaration of Human rights taught us that all human beings are born free and equal in dignity and rights. We are all endowed with reason and conscience and should act towards one another in a spirit of humanity (Article 1. Universal Declaration of Human Rights, 1948). It was these values and principles that would be put to the test as my generation took up the formidable struggle for justice, human dignity and equality.

Life on the reserve with all its inequities was something more than a story of survival and resistance. It was part of a much bigger picture that took me on a journey of discovery of global proportions. Indeed it is a journey that has never really ended.

The search for answers took me to North America, England and eventually to the Celtic regions of Ireland and Scotland.

The practice of forcibly removing Indigenous people from their land and placing them in controlled conditions on reserves was a well-established trait of British Colonisation. At least two centuries before Australia was colonised, the Irish were invaded and dispossessed of their traditional lands. They were forcibly removed to reserves west of the Shannon river in Ireland-otherwise known as the 'To Hell or Connaught' scheme headed by Oliver Cromwell's colonial regime (Ellis, 2000).

The Cromwellian Colonisation of Ireland, 1652-1660 is a legacy of terror and brutality of horrendous proportions. Following its application in Ireland the system further mutated to become a potent force in British colonial policy and practice. The 'To Hell or Connaught Scheme' remains firmly planted in the Irish truth telling memory bank (Ellis, 2000). The Scottish Highland Clearances have a similar ring to the narrative of British Imperial expansion, dispossession and land appropriation. It equally applied to North America's First Nations removal policies, and arguably was at its most potent force when it reached Australia in the 1788.

The multitude of statutory laws that gave powers to dispossess, segregate and remove First Peoples to reserves in Victoria are mostly carbon copies of those used to justify the

Colonisation of other First Nation peoples. They soon became a patchwork of generic laws and forced enclosures that engulfed the rest of Australia up until the mid 20th Century and beyond. Subsequently, the racial segregation laws became part of the Apartheid system under the white minority government of South Africa in 1948.

Looking back at the policies and practices of State and non State entities of the time there are many systemic injustices that were perpetrated against First Peoples. These are the legacies of Colonisation that the Truth Justice Commission has been mandated to examine and report upon.

Ironically the role that reserves played in relation to Indigenous rights based issues remains culturally and strategically important. They support the validation of Indigenous connections with the ancestral lands and the apical ancestors who were Oncountry when British sovereignty was imposed. While it has always been contested ground on which the notion of British sovereignty was imposed, reserve history and culture has maintained a strong link between traditional owner rights and the ancestral lands today.

This is one of the strategic focus points of Yoo-rrook's mandate under section 3.a) iii. iv. and v. of the Terms of Reference. They focus on 'protectionist and assimilationist policies including the forced removal practices and attempts to eradicate language culture and identity'. Other Human Rights violations include 'eviction, displacement and dispossession, massacres, wars, killing, and genocide or other acts of similar gravity' (see-Terms of Reference p.3).

This provides a background for viewing the establishment of the Yoo-rrook Justice Commission and its mandate as a Royal Commission in 21st Century Victoria against the chronology of past Inquiries.

The First Inquiry into British Colonisation, Port Phillip District (Victoria), 1837-39

The exposure of Britain's violent colonising practices was at the heart of the first formal Inquiry into British and First Peoples relations in Colonial Victoria in 1837. The key factors that led to the first British Select Committee Inquiry are relevant to Yoo-rrook's mandate arising from the legacy of the impact of Colonisation today (Yoo-rrook Justice Commission Terms of Reference, 5 August, 2021: 3).

The Select Committee's brief was to enquire into and report on the inhabitants of all British Colonies and to make recommendations on remedies that 'would secure to the Indigenous inhabitants the due observance of Justice and the protection of their rights' (Select Committee Inquiry Report, 1837: 3).

The Select Committee heard evidence from 1837 to 1839 producing an extensive transcript that identified the following injustices relating to the:

'loss of land, the deliberate killing of Aboriginal people, the introduction of alcohol, the exploitation of women and indirect damage caused by the impact of Colonisation on the dislocation of traditional life and the spread of European diseases of pandemic proportions ' (Christie, 1979: 85-87).

The report was a damning indictment on the morality and injustice of British colonisation. It condemned the basis of British occupation and sovereignty and found that the 'conflicting Acts of settlement had been framed, disposing of lands without any reference to the possessors and occupants (Traditional Owners), and without making any reserve of the proceeds of the property of the natives for their benefit ' (Select Committee Inquiry Report, 1837: 4).

The terminology of the report is illuminating in today's context. It refers to 'Invasion, Dispossession, Mass Extermination, Génocide 'and many other systemic Human Rights violations.

The Inquiry did not include any Indigenous members who were the victims of the atrocities reported. It was conducted by non-Indigenous people most of whom were ignorant of the diversity, resilience and longevity of Indigenous culture and religion. The general thrust of the recommendations were guided by preconceived and ethnocentric notions of Aboriginality and the remedies for survival were based on religious conversion and protection from further atrocities on reserves. This was the origins of the formal policy of 'Protection ' and the reserve system in colonial Victoria.

In summary, the British Select Committee inquiry exposed the brutality of British Colonisation and the state of race relations in colonial Australia. Moreover, it brings home to Yoo-rrook the reality of the inseparable nature of the legacy of past and present historic and systemic injustices.

Analysis of the main findings are drawn from an Indigenous perspective enabling one to step outside the import of western constructs to critique the impact of Colonisation.

Key Findings of Report

British colonisation 'was one of economic and physical exploitation and the mass extermination of indigenous people'. Mass extermination and the deliberate killing of the Aborigines evokes a deliberate and systematic intent of genocide as enshrined in the Genocide Convention, 1948.

Indigenous occupants have an 'incontrovertible plain and sacred right to their own soil'. Oxford Definition (irrefutable, indisputable, undeniable, incontestable, unquestionable,

definitive, absolute). 'Indigenous occupants of their own soil 'validates prior occupation and undermines the legal fiction of terra nullius?

'Europeans have entered their borders uninvited, and have punished the natives as aggressors if they have evinced a disposition to live in their own country'. Do not entering people's borders without permission run synonymous with the language of invasion?

If Indigenous occupants 'have been found upon their own property, they have been treated as thieves and robbers and driven back into the interior as if they were dogs or kangaroos.' If you're found in occupation of your own property doesn't that give rise to a pre- eminent title? And the recognition of prior ownership?

'Through our taking possession of their hunting-grounds, we have despoiled them of their means of existence' (Report From the Select Committee, 1836-37:5-6). Taking possession of your hunting grounds without permission and consent and despoiling your means of existence flies in the face of terra nullius and Cook's explicit Instructions to gain consent from the Traditional Owners in 1770.

The outcome of the Inquiry saw the establishment of the Port Phillip Protectorate in what became Victoria, under the policy of Protection (Victorian Protectorate System, 1838–49). Protection arose out of the moral dilemma imposed by the impact of Colonisation. It was a way of dealing with the gross human rights violations and crimes against humanity that were identified in the Select Committee report. Sadly it only lasted 10 years and was abolished after protests from the squattocracy who controlled the legislature of that period.

In summary, the British Select Committee inquiry and report exposed the brutality of British Colonisation and invasion in the early 19th Century. It highlighted the state of race relations in colonial Australia and brings home to the Yoo-rrook Justice Commission the inseparable nature of the legacy of past and present historic and systemic injustices.

The Chronology follows the fault line of the 1837 Inquiry to the extent to which First Peoples in Victoria have and continue to be put under the microscope. It describes the multitude of Inquiries and separate acts of Parliament over the intervening period of 1837-2021, see Chronology of Inquires & Legislation focusing on First Peoples, Victoria, 1837-2021.

From 1837 - 2021 there have been over 50 different Inquiries and Acts of Parliament passed on Aboriginal people in the State of Victoria (McCorquodale, 1987:12-13). Historically we are the most legislated, examined, managed and regulated people in the country. In this context alone there would be no other cultural or ethnic group subjected to the same degree of paternalistic domination and control as Victoria's First Peoples. Most relevant question to ponder here is why has just about every element of Aboriginal land, culture, identity, well being, and self determination been subjected to such oppressive scrutiny and control? No

doubt there has been some change in policy direction over the last generation but for the most part that is the reality of Victoria's First Peoples and their history of Colonisation. The survival and resilience of Victoria's First Peoples against the impact of Colonisation and forced removal is nothing less than remarkable.

The more recent Commissions into Deaths in Custody and the forced removal policies continue to reflect historic systemic injustices perpetrated State and non State Entities in current reports and statistics including closing the gap scenarios and the Black Livers Matter protests.

Reports of Indigenous custody rates in the Criminal and Juvenile Justice system indicate that Aboriginal and Torres Strait Islanders are 14 times more likely to be imprisoned than the general population. For Indigenous young people, the detention rate is 35 times higher than non-indigenous people. Significantly, while imprisonment rates have otherwise stabilised in Australia, rates for Aboriginal and Torres Strait Islanders have increased by more than 50 percent in recent years (Balint, Evans & Nesam, 2014:208-210; Sydney Morning Herald, 29 July, 2021).

This is a matter of urgent concern that works to reproduce not only indigenous peoples' historical distrust of the system but also impacts on their social disadvantage, family dislocation, intergenerational trauma, cultural deprivation and harmful media deficit conceptions of First Peoples.

The forgoing background and Chronology of events provides the basis for the Yoo-rrook Justice Commission and its mandate. As alluded to at the beginning of my talk. It is an honor to be chosen for this rather formidable task and against this background one can better understand the magnitude of the job ahead. I'll leave it there with a call out for all the support the Commission can muster from First Peoples, the Australian Law Academy and the community at large, to make sure that the outcome is a fair, just and peaceful one for First Peoples and for Victoria as a whole.

Thank You

Commissioner Dr Wayne Atkinson: Yorta Yorta Yorta- Dja Dja Wurrong, Traditional Owner

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