

Lock it in

A Social Inclusion Perspective on the Case for Funding Legal Services

3RD NATIONAL ACCESS TO JUSTICE PRO BONO CONFERENCE

Brisbane, 27 AUGUST 2010

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We are discussing access to legal services on Aboriginal land, land that was unjustly taken from a People who were, and continue to be, unjustly subjected to the crime of colonisation. I pay my respects to the traditional owners and custodians of this land.

I have been asked to share some reflections on the social inclusion perspective on the case for funding legal services to ensure genuine access for people who are socially, economically and politically excluded.

This argument is conceptualised in some quarters as being an act of largesse provided to those who cannot pay their own way. Indeed, if we adhere to the accepted wisdom that people are first and foremost customers with choices rather than citizens with rights and responsibilities, then it is little wonder that the case for funding is seen, at best, as a useful way of addressing an individual deficit rather than being an acknowledgement of a structural deficit.

I come from an organisation that stands with the people who have been pushed to the margins of society and then made to feel that they deserve to be pushed to these margins and that they should be grateful not only for the charitable assistance they may need but also that that the government-provided assistance and services they receive should be regarded as a privilege rather than a right.

Structural and historical perspectives provide powerful antidotes to this insidious misconception. As Charles Perkins put it: "We know we cannot live in the past but the past lives in us."

Whether we are thinking of people who are excluded because of their marginal attachment to the labour market, their gender, their cultural and linguistic diversity, the social relations in which their disability is constructed, or their Aboriginality, we need to re-state at the outset of any discussion of social inclusion that social exclusion is a structural symptom rather than the effect of a personal choice or a personal deficit.

Our history, since colonisation, has not only accepted exclusion; it has enshrined it, as structure, as attitude, as instrumental practice. I am reminded of the poem by Jack Davis on the death in custody of 16 year old John Pat in 1983. He writes of the dangerous power of Guddia (or whitefella) law:

Write of life / the pious said
forget the past / the past is dead.
But all I see / in front of me
is a concrete floor / a cell door / and John Pat.

Agh! tear out the page / forget his age
thin skull they cried / that's why he died!
But I can't forget / the silhouette
of a concrete floor / a cell door / and John Pat.

The end product / of Guddia law
is a viaduct / for fang and claw,
and a place to dwell / like Roebourne's hell
of a concrete floor / a cell door / and John Pat.

He's there - where?
there in their minds now / deep within,
there to prance / a sidelong glance / a silly grin
to remind them all / of a Guddia wall
a concrete floor / a cell door / and John Pat.

It is no accident that among the First Peoples of this land adults are 14 times more likely than non-indigenous adults to be sent to gaol. Being locked up follows hot on the heels of being locked out.

I want to share a little story from the days in 1996 when, God help me, I was working full-time on a doctoral thesis. I recall sitting on the front porch of our flat in Liverpool, in the South-West of Sydney. I was taking a break, having a quiet smoke, trying to digest what I'd been reading.

Just at that moment, a woman and a man walked past; the man a few steps ahead of the woman, yelling:

"I know people. I've been to the factory where they're made."

Running inside I wrote this down. Then all but chased after the guy to thank him. His unsolicited utterance crystallized what I was struggling to articulate.

"The factory where they're made."

Or unmade.

I thought of the people I knew, starting with my own old man, who had been unmade in the factory. In my dad's case it was cancer from solvents he was required to use in testing road materials.

How many stories have I heard since then?

People made and pulled apart by social and economic structures that de-humanize, that compartmentalize, that destroy, that humiliate, that blame; people made to feel that lives are worth little, that their position at the bottom of the heap completely excludes and effectively disempowers them.

It was 1996 that saw the publication of a ground-breaking Social Justice Statement from the Australian Catholic Bishops. In that timely statement the following radical assertion was made:

"In the main, people are poor not because they are lazy or lacking in ability or because they are unlucky. They are poor because of the way society, including its economic system, is organised."

As far as the intersection between the law and people experiencing exclusion is concerned it is often as if people are being systematically prepared, or *made* (to adopt the poignant language of my Liverpool informant) for a series of collisions with state instrumentalities of surveillance, control, coercion and, sometime, incarceration. As one solicitor in Canberra working primarily on Legal Aid cases told me recently: "I love being able to offer some advocacy for the people who have had no one to advocate for them. The tragedy is that the first time they are offered some advocacy is because they've fallen foul of the law."

The law, of course, develops as a reflection of social relations in a given society with its given economic formation. We do well to remember the anonymous piece of doggerel from 15th century England as the impact of early enclosure laws were being felt by the most vulnerable:

*“The law locks up the man or woman
Who steals the goose from off the common
But leaves the greater villain loose
Who steals the common from under the goose.”*

In the light of this I take the opportunity to not only support a strongly funded and supported suite of legal services to ensure access for those who are accused of stealing the goose from off the common, but also a strengthening of support for the kind of public interest advocacy that questions the theft of the commons from under the goose.

The law does indeed continue to lock up the man or woman who is more likely to be from a disadvantaged background, often starting them on their bleak journey as juveniles. It is no surprise to learn that incarceration often begets even more incarceration rather than even a notional rehabilitation or support. Quite the contrary, the people who have been pushed to the margins, locked out, are either pathologised or criminalised. In either case, they are always problematized.

Professor John McKnight has observed: *“Revolutions begin when people who are defined as problems achieve the power to redefine the problem.”*

Social inclusion cannot come from above. The people who are most disempowered in our society are the ones who know the truth of their own exclusion better than anyone and that the truth they, and those who take their side, speak must be spoken to each other. This is inclusion where the people are in control rather than being viewed as the mere objects of inclusion. It is said that truth must be spoken to power. When you think about it this way, sharing the truth with each other *is* the truth being spoken to power.

The Social Inclusion framework is useful but it has serious limitations if we allow it displace the critical and liberatory social justice agenda.

As Professor Ilan Katz of the Social Policy Research Centre observed:

“Interestingly the term social inclusion, while a lot warmer and fuzzier than social exclusion, lacks the connotation of exclusionary forces. It therefore implies a much stronger policy focus on helping the excluded to participate in mainstream society, without examining what it is about that society that excluded them in the first place.”

There is often an incredible presumption that people are incapable of analysing their own situation. This presumption carries with it a handy rejection of the notion of actually providing resources to people to allow them to articulate their analyses and proposed solutions. And yet under the guiding stars of struggle and hope the greatest social reforms have been wrought by grass-roots movements. In addition to the pressing needs of personal advocacy, legal advice has an important role to play in this social advocacy and grassroots activism.

A couple of weeks ago I took part in the joint launch of a Reconciliation Action Plan for two Canberra NGOs, ACTCOSS and Woden Community Services. Ngunnawal Elder Aunty Janet Phillips gave a beautiful Welcome to Country. One of the things she said in her Welcome was that: *“for Aboriginal Australians there’s no such thing as justice; there’s just us.”*

Aunty Janet’s words sound harsh. But they should come as no surprise. Reverend Doctor Djiniyini Gondarra from the Arnhem community of Galiwinku, for example, has just arrived back from the International Convention on the Elimination of Racial Discrimination in Geneva. He reports that many aspects of the intervention in Northern Territory Aboriginal communities were heavily attacked as being unjust.

Some might also find Aunty Janet’s words to be lacking in hope. Nothing could be further from the truth. When she says “there’s just us”, this is not a cry of despair but rather a moral call to arms.

At the heart of “us”, however, there has to be at the very least a sense of travelling towards greater equality. Otherwise the “us” becomes a travesty. Forget the so-called rising tide that lifts all boats. Solidarity means being in the *same* boat.

Australia continues to be a highly unequal society. If we care to dig a little deeper through some of the rhetoric that calls on the people doing it tough to lift their game, we would discover that inequality of income and of access to essential services lies at the heart of disadvantage in Australia. Australian National University economist Andrew Leigh, recently elected as the new Member for Fraser, and Oxford University’s Tony Atkinson have recently analysed a 30-year trend of rising inequality with the rich boosting their share of Australian income significantly over the last five years. The trend for wealth inequality is worse, with the richest 20% of households owning 63% of the net wealth. It’s not just about income and wealth. There is the need for a redistribution of services and resources. We need to understand the basics of life as social goods rather than as sources of profit. Neither is it good enough to factor in the work of charities as the default provider of essentials.

The founder of the St Vincent de Paul Society, Frederic Ozanam, a 19th century French activist academic, once wrote:

“Charity is the Samaritan who pours oil on the wounds of the traveller who has been attacked. It is justice’s role to prevent the attack.”

Charity, be it warm or cold, is no substitute for justice.

The 1975 Commission of Inquiry into Poverty noted that:

‘If poverty is seen as a result of structural inequality within society, any serious attempt to eliminate poverty must seek to change those conditions which produce it.’

As the Compendium of social inclusion indicators, a publication of the Australian Social Inclusion Board, tells us, Australia stands near the bottom of the list of relative social expenditures in comparison with countries in the European Union. In eight instances individual countries had a rate of expenditure that was over 30% of GDP, around one and half times that of Australia.

The greatest power for progressive social change lies precisely with the excluded. But not, as some claim, by individually addressing their own exclusion as if it were a private malady. As the writer Isabel Allende expressed it through the voice of one her characters:

"...it was not a question of changing our personal situation, but that of society as a whole."

It was the French sociologist, Pierre Bourdieu, who spoke of the Right Hand of the State as the expression of the values and desires of the market, as opposed to what he called the Left Hand of the State, being "the trace, within the state, of the social struggles of the past."

As Bourdieu (1998:32) noted:

"In the United States, the state is splitting into two, with on the one hand a state which provides social guarantees, but only for the privileged, who are sufficiently well-off to provide themselves with insurance, with guarantees, and a repressive, policing state, for the populace. In California, one of the richest states of the US... since 1994 the prison budget has been greater than the budget of the all the universities together. The blacks in the Chicago ghetto only know the state through the police officer, the judge, the prison warder and the parole officer."

People are forced underground because they understandably do not want to seek assistance from charities. They resurface in our prisons or on our streets. They're forced to hock their furnishings, their personal possessions. They seek consolation in the arms of loan sharks and payday lenders.

In his marvellous Athens address of 1996, Bourdieu (1998:29) reflected as follows:

"Everywhere we hear it said, all day long – and this is what gives the dominant discourse its strength – that there is nothing to put forward in opposition to the neo-liberal view, that it has succeeded in presenting itself as self-evident, that there is no alternative."

There is an alternative: the truth of those who, either outside the labour market or on its fringes, or even in its deregulated heart, are presenting themselves to the St Vincent de Paul Society and the many other charities, not simply requesting assistance but also entrusting to us their stories of being denied dignity, of having hope snatched away from them and from their children.

Charity may well tide them over until their next crisis. It is justice, only justice, however, that will fulfil their long-term dreams.

It is the people in our community who are most disadvantaged, those who face a number of barriers to social inclusion, who are much more likely to need the support of the justice system. The ABS report *Recorded Crime-Offenders, Selected States and Territories 2007-08* shows that:

- In 2008, forty-seven percent of male and 51 percent of female detainees had not completed any education beyond Year 10.
- More than half (51%) of adult male detainees and more than three-quarters of adult female detainees (78%) received a welfare or government benefit as a source of income in the 30 days prior to arrest.

People experiencing disadvantage are more likely both to be victims and perpetrators of crime:

- Women without a non-school qualification are almost twice as likely to experience partner violence (How Australia is faring p 69)
- People who are unemployed are almost twice as likely to be the victim of an assault as people who are employed (How Australia is faring p 70)
- Renters – typically much lower socio-economic status than home owners – are nearly twice as likely to have their homes broken into, or experience an attempted break-in (How Australia is faring p 71).

Social networks offer a safety net when things go wrong, but for people facing a number of barriers to inclusion, access to family and friends can be limited.

In 2006, 93% of the population had someone to turn to in time of crisis.

People experiencing low income, unemployment, disability, poor health, older age, or language barriers reported having lower levels of support in a time of crisis. Intervention and assistance at major turning points in a person's life, such as losing a job or divorce, is shown to reduce the chance of slipping into disadvantage. Support can help families and communities to function through difficult times. Having a job provides access to a social network outside of family and friends. Disadvantaged groups are the people who are most in need of assistance and are the most vulnerable to further disadvantage.

At risk, vulnerable Australians are often the least able to access existing services. People find it harder to access services, the further they live from major cities. It is the responsibility of governments and the systems which underpin a democratic society to respond to these challenges, to deliver systems and services to the hard to reach. As Italian theorist, Domenico Losurdo, put it: *'Democracy cannot be defined by abstracting the fate of the excluded.'*

As you know, a relatively minor legal problem, if left unresolved, is capable of turning into a much bigger problem. Each time a person experiences a problem, they become increasingly more likely to experience additional problems. Consequently, failure to address legal issues, particularly at an early stage, can lead to entrenched disadvantage – debt, family violence, family breakdown, and homelessness.

The Margaret Thatcher who told us that there was no such thing as society also commented, *apropos* of the Irish hunger-strikers in 1981, that: "Crime is crime is crime. It is not political."

The truth is that, whether we like it or not, everything is political. The manufacture of crime and legal problems in general and the denial of access to adequate legal advice and advocacy are no exceptions.

After usually being the one to spell out the bad news in glorious detail I always make it a practice to end on a note of hope. It comes to us today courtesy of the German poet and playwright, Bertolt Brecht, who dared to tell us that:

"Because things are the way they are, they will not stay the way they are."