

# Seeing is Believing

BY ZITA ANTONIOS

Several years ago the Commonwealth Government appointed three Commissioners to inquire into the development of the Australian coastal zone. A meeting was held at Millingimbi on the coast of Arnhem Land where the Commissioners met with Aboriginal custodians and heard their concerns about the protection of the coast, the inter-tidal zone and their salt-water country. The Aboriginal custodians were worried about pollution, the intensity of commercial fishing, especially the waste of what is called 'by-catch', tourist operations and the protection of sacred sites in the sea. At the end of the day a senior custodian offered to take the Commissioners to a site for which he had particular responsibility. Shoes and socks were taken off, trousers were rolled up as the Commissioners waded out to an aluminum run-about. There was an air of expectancy as the old man carefully aligned landmarks and directed the boat to a particular point. The Commissioners peered over the side at a patch of muddy brown water, *completely indistinguishable* from the rest of the sea which stretched out around them. Their faces could not hide their disappointment and disbelief as they stared at nothing.

Hundreds of kilometres to the west, also in the Northern Territory, an optical fibre cable was laid through the Victoria River District. "The route could not avoid traversing land which held documented mythological significance. The whole area formed a densely mythologised cluster of sacred sites, including a child or a piccaninny Dreaming (Karu), a major blue-tongued lizard Dreaming (Lungarra) and a black whip snake Dreaming (Wiyawatu) ... The area represented a kind of spiritual bottleneck which made it inevitable that some form of damage to significant Dreaming sites and pathways would occur" in the process of laying the cable<sup>1</sup>.

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Under the *Northern Territory Sacred Sites Act* (1989) compensation for interference with land was negotiated. But "as one of the company representatives indicated, while he was *not* saying the areas in question were *not* sacred sites, 'he had a lot of difficulty in paying for something that was invisible' ... something that you could not place a recognisable value on."<sup>2</sup>

Recognition is the fundamental issue in achieving respect for Indigenous spiritual beliefs. Lack of recognition can occur at several levels.

In Australia, the first level flows from a deeply-instilled, almost subliminal disbelief in the value of Indigenous culture generally. It has its origins in nineteenth century social Darwinian theory in which Aboriginal culture was regarded as primitive, the product of an unevolved society. Within such a framework, the progress of civilisation - epitomised by Western Europe - was marked not only by technological advances, but by refinement in the artifacts of the law, government and religion. Indigenous religious belief, if not stigmatised as devil worship, was regarded as a crude and benighted form of superstition. The missionary imperative was to bring our dark brothers and sisters within the light of civilised belief and to find salvation within Christianity. The separation of Aboriginal and Torres Strait Islander children from their families was part of the attempt to destroy Indigenous religion and to cut the cultural descent lines of its transmission.

Such aggressive denigration of Indigenous culture has diminished today. A more politic, polite, sometimes romantic, view is expressed. But the undertow of this history remains active. It can be revealed by what is omitted. Another form of invisibility.

During his visit to Australia in 1997, Abdulfattah Amor, the United Nations Special Rapporteur on Religion and Belief, observed that information on Aboriginal and Torres Strait Islander beliefs was not included in the statistics provided to him on Australia's religious diversity.

Aboriginals are not identified in the table of religions in Australia. Part of this population may, of course, be included in the Christian religion. However, the Aboriginal people have their own beliefs, which are manifested by their sacred ties to the Earth and which have to be taken into account as part of Australia's religious diversity.<sup>3</sup>

The Special Rapporteur went on to note that:

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The land and sacred sites hold a fundamental significance for Aboriginal people insofar as their beliefs are identified with the land. A basic question is therefore the recognition of an Aboriginal religion intrinsically related to the land within the framework of an Australian society essentially based on Judeo-Christian and western values. In the view of the Aboriginals the integrity of the land takes on a religious dimension which therefore has to be preserved.<sup>4</sup>

This passage indicates further difficulties with the recognition of Indigenous spiritual beliefs. Unlike the Judeo-Christian tradition where the numinous is located in *places* (usually structures) consecrated to worship, Indigenous spirituality is embedded throughout the entire natural landscape in complex interwoven patterns of dreaming tracks, significant and sacred sites laid down from the time of creation. They express the origins of all vitality and are essential to its universal maintenance. At the same time they are intensely personal.

The significance of country is difficult for non-Indigenous people to grasp. One of the most vivid attempts to convey its meaning was made by the late Professor Bill Stanner:

No English words are good enough to give a sense of the links between an Aboriginal group and its homeland. Our word 'home', warm and suggestive though it be does not match the Aboriginal word that may mean 'camp', 'hearth', 'country', 'everlasting home', 'totem place', 'life source', 'spirit centre' and much else all in one. Our word 'land' is too spare and meagre. We can now scarcely use it except with economic overtones unless we happen to be poets. The Aboriginal would speak of 'earth' and use the word in a richly symbolic way to mean his 'shoulder' or his 'side'. I have seen an Aboriginal embrace the earth he walked on. To put our words 'home' and 'land' together into 'homeland' is a little better but not much. A different tradition leaves us tongueless and earless towards this other world of meaning and significance.<sup>5</sup>

The distance between our traditions is certainly profound. But I suggest it is more than mere difference that gives the particular quality to the lack of recognition of Indigenous culture and religion. We manage, in Australia, without sharing beliefs, to recognise many other religious traditions different to that of the Judeo-Christian world. The Islamic Faith, Buddhism, Hindu and Shinto Religions may not always be extended the fullest respect, but their quality as genuine religious beliefs is not impugned or called into question in the same manner as are Indigenous beliefs.

It is not merely that Aboriginal and Torres Strait Islander cultures have different beliefs and those beliefs find expression in different forms. It is the location of the spiritual in the physical landscape that generates so much difficulty in the extension of respect.

Values which underpin the dominant settler culture of Australia are directly confronted by the Indigenous relationship to land. The analysis of this relationship by Judge Blackburn in the Gove Peninsula case, *Milirrpum vs. Commonwealth*<sup>6</sup>, revealed the divergent values which collide when Anglo-European concepts are applied to Indigenous culture.

The Judge was impressed with the depth and reality of the Aboriginal connection to land to the extent that he ventured the curious thought that possibly Aboriginal people were owned by the land rather than owning it. But in his view, their relationship failed to satisfy the common law test of ownership by lacking to demonstrate a right to exclusive possession. The significance of exclusive possession of precisely defined areas of land, of course, reflects the values and needs of a sedentary agricultural society. Land in the common law tradition is primarily defined by its utility; it is an economic commodity characterised by the ability to buy and sell and use it as you see fit, constrained only by the rights of adjacent land owners.

As Professor Stanner said, "we can scarcely use" the word land "except with economic overtones". The location of religious values in an economic commodity brings those values into sharp relief against values shaped by the hard edge of materialism and economic rationalism. And this is not an abstract philosophical collision of values. It happens in the physical world where spiritual significance collides with scrapppers and bulldozers.

Perhaps the greatest attention, certainly the most critical attention, is paid to Indigenous beliefs when they are pitted against proposed land developments and resource extraction projects. It is a field of contest where the precise dollar figures of employment and export earnings are contrasted against the intangible and divergent beliefs of another culture. There is a kind of echo of the social Darwinian theory as progress and development is seen to be impeded by the beliefs of an ancient culture clinging to its impractical heritage. As one Aboriginal man wryly put it: "Indigenous culture is seen, basically, as a speed hump on the road to development."

Whenever these conflicts between development proposals and the protection of significant sites occur, not only scepticism but frequently deep

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cynicism is expressed about the existence and characters of those sites. The Ngarrindjeri experience with Hindmarsh Island and the Gamilaraay people's inability to protect Boobera Lagoon near Boggabilla on the New South Wales-Queensland border are only two of the more recent demonstrations of this denigration of belief and accusations of bad faith. Always there is a demand for proof.

The United Nations Rapporteur commented on the complexities and the inconsistency provided by various State, Territory and Commonwealth laws. He observed that:

One criticism which is often put forward is the inability of these laws derived from a western legal system to take account of basic Aboriginal values. A basic difficulty arises from the fact, that under some laws, Aboriginals have to prove the religious significance of sites and their importance.<sup>7</sup>

One wonders how proof of the appearance of the Blessed Virgin Mary in Lourdes would fare in 1998 if pitched against a billion dollar mining proposal. Would the issue ever even emerge? I have chosen this example because it is most familiar to me - I am sure you could think of many others from different belief systems. But the problems of proof are not confined to the credit of stories given substance, resonance, meaning and significance by faith and belief. They go to the processes of inquiry and the intrusive public nature of the disclosure of information to inappropriate people. Acute sensitivity is not confined to Aboriginal people. The commercial-in-confidence is a very real form of secret business.

In a multicultural society where competing interests and values must be balanced, there is no doubt of a need for a discretionary process of assessment which accords all parties natural justice. It is the nature of that balance and the extent of protection which is of deep concern.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (CTH) was reviewed by the Hon Elizabeth Evatt AC in 1986. The Review was guided by seven policy objectives. Three in particular are worth reciting:

- To respect and support the living culture, traditions and belief of Aboriginal people and to recognise their role and interest in the protection and control of their cultural heritage.

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- To ensure that heritage protection laws benefit all Aboriginal people, whether or not they live a traditional lifestyle, whether they are urban, rural or remote, so as to protect the living culture/tradition as Aboriginal people see it now.
- To resolve some of the difficulties of developers by better procedures which ensure early consideration of heritage issues in the planning process, effective consultation with Aboriginal people and genuine mediation.

The latter point identifies that in common with many conflicts concerning Indigenous rights, early consultation and negotiations can avoid many unnecessary conflicts and achieve a reconciliation of interests in a practical way. The work clearance agreements negotiated in South Australia by the Aboriginal Legal Rights Movement are a very good demonstration of this approach.

Unfortunately the recommendations of the Evatt Report have not been translated into effect in the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 which is intended to replace the current *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

The Bill proposes to minimise Commonwealth involvement in Aboriginal cultural protection. The States and Territories will be accredited after meeting certain minimum standards. The Commonwealth would then have no role in the protection of Aboriginal heritage except in relation to unaccredited regimes or in cases where the protection of an area or object might be in the 'national interest'.

The Bill has been widely criticised. Elizabeth Evatt was quoted as saying that the Bill represented an abdication of Federal responsibility to preserve Aboriginal heritage by handing back its protective power to the States without adequate minimum standards. She said that this was contrary to her findings that most State and Territory regimes do not adequately protect cultural heritage.<sup>8</sup>

The Aboriginal and Torres Strait Islander Commission also criticised the Bill on a number of similar grounds including the fact that 'national interest' is not defined, and may be limited to decisions which affect export income and employment rather than allowing a broader definition which might include the protection of significant areas and sites.

The Parliamentary Joint Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund reviewed the Bill in light of the recom-

mendations made in a previous report and reported its further findings in its 12th Report in May 1998.

The Committee recommended specific changes to the Bill including that it should:

- provide blanket or presumptive protection of Indigenous heritage and for States and Territory legislation to have this protection in order to achieve accreditation;
- define the 'national interest' comprehensively (but not exhaustively) so as to include the protection of Indigenous heritage; and
- provide a more detailed and comprehensive standard by which States and Territories may qualify to adopt their own heritage protection regimes subject to the Commonwealth's last resort function.<sup>9</sup>

These suggested amendments would resolve in some measure the main flaws of the Bill but it is arguable that they do not go far enough. In particular, the retention of any form of a 'national interest' criterion for Commonwealth intervention may be a step away from the fundamental purpose of the legislation and the Commonwealth national responsibility to provide a remedy of last resort for all Indigenous heritage which is not protected adequately by State or Territory legislation. The minority report of the Committee rejected the Bill on this ground:

The Minority emphasises the point entailed jointly by evidence from Ms Elizabeth Evatt, Professor Garth Nettheim, and Mr Mick Dodson that:

- The combination of an inadequate accreditation regime;
- together with 'national interest' criterion for submitting heritage protection to the Commonwealth accredited jurisdiction; means
- in practice, the Bill would establish a heritage protection regime which could not be used as a last resort in an overwhelming majority of cases.

Despite the Committee's concern about the Bill the Government proceeded with it in its original form and it has passed through the Lower House without amendment. It is now to be considered by the Senate.

## Conclusion

In closing, the failure of our country to accord respect and effective protection to the religious beliefs of its Indigenous peoples calls into question our obligations under Articles 2, 18, 26 and 27 of the International Covenant on Civil and Political Rights dealing with religious freedom, equality before the law and minority rights to culture and religion. It ignores the call of the United Nations Special Rapporteur for Indigenous Peoples to respect “the profound highly complex and sensitive relationship that Indigenous people have with their land”.

But more immediately, it refuses the gift of Indigenous perception.

To see the spiritual within the material, to recognise our intimate relationship and obligation to all living things in the natural world, draws us into relationship with timeless and transcendent values. Surely this is one of the most nourishing and sustaining perceptions of the human spirit. To deny respect for this is to deny respect for our own spirit.

## Notes

- 1 McWilliam, A., “Negotiating Discretion: Sacred Sites, Damage and Due Compensation in the Northern Territory”, *Australian Aboriginal Studies*, no. 1, 1998, p. 6.
- 2 *Ibid.*, pp. 6-7.
- 3 “Implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief”, report submitted by Mr Abdulfattah Amor, Special Rapporteur UNDOC, E/CN. 4/1998/6/ADD.1, p. 9.
- 4 *Ibid.*, p. 17.
- 5 Stanner, W. E. H., *White Man Got No Dreaming: Essays 1938-1973*, Australian National University Press, Canberra, 1979, p. 230.
- 6 *Milirrpum v Nabalco* (1971) 17 FLR 141 (NTSC).
- 7 Amor report, *supra* note 3, para. 93.
- 8 See also Kingston, M., *Sydney Morning Herald*, 12 May 1998, p. 6.
- 9 Parliament of the Commonwealth of Australia, *Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund* (12th Report), Canberra, 1998, para. 4.4.