

The asylum was set up by El Pastor fifteen years ago, after he was deported to Mexico for being an illegal migrant in the United States. After years of drug addiction, womanising and time in prison he ‘found Christ’ and realised, in his words, that his path is ‘to care for the human garbage of Juarez’. Since that time he has dedicated his life to helping ‘his congregation’. As we walk around the courtyard he tells me some of the stories of the people we meet. One woman is locked in a cell with only a twenty centimetre square hole for light. ‘She recently crucified a cat, pulled out its eyes and ate them’, he tells me. She’s locked in of her own free will. Another guy with Down’s syndrome is very effusive. He wants to hug and touch all the visitors and shriek at every opportunity. ‘Last week, he beat another patient to death’, El Pastor explains. Another woman, an ex-lap dancer whose brain exploded because she was raped one time too many, takes my arm and is very affectionate. She starts to rub my belly and El Pastor bellows, ‘She likes to fuck!’ and lets out a big belly laugh. Welcome to Juarez.

More visitors come and there is more screaming and more hugs. Lunch is given out, and some of the inmates take a liking to me and follow me, babbling incessantly. I wander inside and outside, meeting people and checking out the building, trying to gather my thoughts and feelings.

I am invited to sit in on a conversation in English between El Pastor and a new inmate. He describes his addiction to cocaine; he shows us his chest, and tells us how he got the bullet hole there, and the thirty centimetre scar on his belly. All the time El Pastor is praising him for his language skills, for his ability to survive. At one point El Pastor beckons one of his helpers, an inmate with extra responsibilities, who starts to clean up the new inmate’s finger and toe nails. The quiet dignity with which this new person was treated was moving.

Fifteen minutes after saying our goodbyes and leaving the asylum, we are driving back to the border and El Pastor receives a phone call. Oscar the chef/*sicario* (assassin) is dead. ‘It’s sad ... but he was bad to the bone.’ El Pastor asks if it is OK if we make a detour into one of the poor barrios of Juarez, to talk with Oscar’s family. The family has disowned Oscar because of his ultra-violent ways. They want the funeral to be held at the asylum, at the place which accepted him— ‘his family’.

In a city of broken dreams, it is people like El Pastor who keep the possibility of real magic alive. **A**

# Iniquitous Intervention

*Alastair Nicholson*

## Two groundbreaking recent events in Indigenous affairs went unreported by the mainstream media

On the evening of 7 February 2011, at the University of Melbourne Law School, two outstanding events took place that were entirely ignored by the print media and largely by the electronic media.

The first was a press conference addressed by former prime minister Malcolm Fraser in support of a statement making a measured and powerful attack on successive governments for their neglect and ill-treatment of the Aboriginal people of this country, particularly in the Northern Territory <[www.stoptheintervention.org/uploads/files\\_to\\_download/concerned-Australians/Eminent-Australians-statement-7-2-11.pdf](http://www.stoptheintervention.org/uploads/files_to_download/concerned-Australians/Eminent-Australians-statement-7-2-11.pdf)>. Supporting this statement was a remarkable group of Australians, including two former Ministers of Aboriginal Affairs, the Hon Ian Viner and the Hon Fred Chaney; Professors Pat Dodson and Larissa Behrendt; Dr Djinyini Gondarra and Rosalie Kunoth Monks; the Anglican Archbishop of Melbourne and the Moderator of the Uniting Church of Australia; significant members of the academic community specialising in Aboriginal affairs and human rights; and many former judges and leading constitutional lawyers. One would have thought this merited at least a paragraph in responsible newspapers.

The second was one of the more significant events I have attended. It was a public conversation at the Law School with seven senior elders who had travelled from all corners of the Northern Territory to attend. It attracted enormous public interest. Over 400 attended and hundreds more had to be turned away.

During the course of this conversation the elders described the effect of the disempowerment of their people, which is not only still going on but is reducing them to a state of disillusionment and despair. Contrary to the government’s public pronouncements, the elders made it clear that continuing policies include income management under a veneer of non-discrimination, continued compulsory acquisition of five-year leases, and hopelessly inadequate housing policies designed to force Traditional Owners to

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Selling Love in the City of Death

Colm McNaughton

lease their land to the government, destroying Aboriginal homelands.

Education policies are in tatters, bi-lingual education has been abandoned and many children go without sufficient teachers and attend schools in a condition that would not be tolerated by the white community. No proper employment opportunities are offered and youth are left in a state of hopelessness. Local government has almost entirely broken down and the problems of child abuse and neglect have not been addressed despite the Intervention.

The elders concluded by delivering a moving call for action to the people of Australia <[www.stoptheintervention.org/uploads/files\\_to\\_download/concerned-Australians/Elders-statement-7-2-11.pdf](http://www.stoptheintervention.org/uploads/files_to_download/concerned-Australians/Elders-statement-7-2-11.pdf)>. This again went unreported.

The government sought to justify most of their actions by a reliance on sham ‘consultations’ that were hopelessly inadequate and designed to achieve a predetermined result. The elders confirmed this lack of consultation.

The reason that successive governments have been able to perpetrate this outrage has been the supine approach by the Labor party to the issue when it was in opposition, coupled with the failure of the present Opposition to question the continuing inefficiencies and policy mistakes of the present government and the indifference and/or ignorance of the wider community.

To this must be added the incompetent and unquestioning attitude of the media to Aboriginal issues. On countless occasions Aboriginal people have asked me, ‘Why don’t they care about us?’—as well they might.

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Iniquitous Intervention

Alastair Nicholson

Alastair Nicholson was a barrister in 1963–1982, a QC in 1979, Justice of the Supreme Court of Victoria in 1982–1988, Chief Justice of the Family Court of Australia in 1988–2004 and is currently a Professorial Fellow at Melbourne University. He has written and spoken widely on human rights issues.

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This media neglect was even more noticeable in a week when the Prime Minister made a much-publicised statement about the policy of ‘Closing the Gap’, while any critique of government policies was apparently unworthy of reporting. Similarly, in recent weeks, strong censure from the United Nations, under the Universal Periodic Review process of the UN Human Rights Council, barely rated mention in the media. In 2010 the same treatment was given to the criticisms by both the UN Special Rapporteur on Indigenous Peoples’ Rights and the UN Committee on the Elimination of Racial Discrimination.

Two of the many issues discussed during the course of the February 7 conversation were the government’s belated reintroduction of the *Racial Discrimination Act* to the relevant areas of the Northern Territory, and its failure to repeal s. 91 of the *Northern Territory Emergency Response Act*.

The former Act was notably suspended by the Howard government, with Opposition support, to enable the Intervention to proceed. The incoming Rudd government promised to reintroduce the Act, belatedly doing so at the end of 2010; however, Labor specifically legislated to preserve most of the objectionable features of the Intervention, with the effect that it is unlikely that these measures can be legally challenged.

As to the latter, s. 91 of the Act has the effect of singling out Aborigines as the only people in Australia who are not entitled to have customary law or practice or their cultural background and beliefs taken into account by a sentencing judge when they are being dealt with for a criminal offence. The government has declined to repeal this racist and discriminatory legislation.

The Act is also absurd. A judge held recently that s. 91 required him to ignore that a sacred site had been desecrated by white contractors, because he was not able to take into account customary law or practice as aggravating the criminal behaviour in question.

During the February conversation it was asked why it was possible for the government to remove the protections of the *Racial Discrimination Act* from Aboriginal people or to enact racist legislation as within s. 91. Both Malcolm Fraser and I pointed out that this was because Australia—unlike Canada, for example—is one of the few countries in the Western world where there is no constitutional protection of human rights. This means that a perverse or misguided government can impose its will on the people without being subject to any check or balance by the law. The common law, which can be changed at will by the government of the day, similarly offers no protection.

It is therefore clear that unless and until we enact a constitutional guarantee of human rights, we are all at the mercy of incompetent, malign or foolish governments that can operate to destroy the freedom we all cherish. This makes the conservative opposition to human rights guarantees in this country—which includes opposition from sections of the churches—all the more shameful. **A**

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