



THE AUSTRALIAN

INNOCENCE BETRAYED

Customary indigenous law is no excuse for sex crimes

In the Northern Territory a 55-year-old community elder hit and had sex with a 14-year-old girl who was promised to him as a bride when she was four. Describing it as a difficult case where the offender believed traditional law gave him the right to act as he did, Supreme Court Chief Justice Brian Martin sentenced the man to two years in prison suspended after a month. Some people might think this is a sensible practical decision. Justice Martin asserted the sovereignty of the law but applied it with a mercy that respected the role of indigenous culture in governing remote communities. But they are wrong. However it is dressed up, sexual assault is a crime of violence and as such an infringement of a victim's human rights. There are no ifs or buts about it. Anybody who thinks this incident should be sympathetically understood in the context of indigenous law and community practice is effectively endorsing a culture that accepts there are circumstances where a grown man has a right to sexual intercourse with an unwilling child. The length of the sentence minimises the serious nature of the offence. And it creates the unforgivable impression that in the Northern Territory the rights of some individuals are worth less than those of more powerful people. There is no doubting who possessed the power in this grisly act of aggression. The girl had no desire for contact with an individual she did not know and called "the old man". But Justice Martin told the attacker that "it is a reasonable possibility that your fundamental beliefs based on your traditional laws prevailed in your thinking and prevented you from realising that the child was not consenting". Apparently in the Northern Territory there are times when saving no is not enough.

Some indigenous Australians and their allies find many ways to blame European settlement for the cultural chaos that befalls too many remote

indigenous communities. Europeans stole land, separated children from their parents and introduced technologies and ways of living that ended forever the ability of Aborigines to live wholly within traditional tribal cultures, they say. It is all true but it does not explain endemic problems of substance abuse and domestic violence. And in remote communities aspects of indigenous culture can be part of the problem rather than an element of the solution.

Respect for customary law that allows remote communities to maintain civil order and social cohesion has a long recognised role to play in the administration of justice. But indigenous law can be a cover for powerful men to do what they like. Men may claim their standing as community leaders is eroded if they cannot beat their wives. Some argue that ending the system where little girls are promised in marriage would damage the complex web of allegiance and obligations that have governed life for millennia. But while customary law has not changed every indigenous community in the country is now influenced by the laws and values of mainstream Australia. In this case the girl did not want to submit. And it seems she was not alone in thinking her rights were at risk. In addressing her attacker Justice Martin referred to "differences within your community about aspects of the promised marriage laws". He added that this was not just a clash of laws and cultures "it involves a clash of generations". How remote communities adapt traditional values to the fundamental rights of all Australians to be safe from assault is a profound challenge for indigenous leaders. But as *The Australian* reports this morning, leading indigenous women are calling for an end to the abuse of girls under the guise of traditional culture. Good customary law must never be used as an excuse for the abuse of any Australian.