People of the Cedar - Canada, Australia and the Spirit of Indegenous People

Justice Kirby Collection

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OPENING OF AN EXHIBITION OF NATIVE ART FROM THE WESTERN COAST OF CANADA WEDNESDAY, 3 MARCH 1999

The Hon Justice Michael Kirby AC CMG*

INDIGENES AND SETTLERS

Today the High Court of Australia had a visit from a distinguished judge of the Supreme Court of Appeal of the Republic of South Africa. In accordance with convention he sat with us for a time on the Bench and observed the rule of law at work in Australia.

The judge was on his way to a law conference in New Zealand. All around the world, lawyers of the common law are linked together by tradition and by language. They are linked in the countries which once were part of the British Empire. The British had a rare ability to choose amongst the most beautiful places on the surface of the globe to establish their settlements. Thus they chose the tip of Africa at the Cape (where our visitor came from). They chose Australia with its rich beauty, aspects of which we see outside this building today. They chose New Zealand with its extraordinary landscape (to which our visitor was travelling). They chose Canada with its marvellous mountains and open prairies. They chose places generally never far from the sea. They built their settlements, bringing with them the rule of law. The great Captain Vancouver, who called on Albany at the edge of Western Australia went on to explore Western Canada. His name is still carried in the magnificent city which looks at the Pacific. We are united by this history of exploration and settlement.

With the British came many of their own cultural norms and artefacts. We see some of these, still very much alive, in the courtrooms of this building. The wigs. The silken robes. Endless bowing and utterances of deferential respect. The secrets and traditions of the law, as taught to us by the British, are still an element of our culture, as much in Canada as in Australia.

We share that legal culture. It is a good thing that, today, lawyers in Australia and elsewhere are turning to Canada for legal ideas. There is probably no country in the world which is so similar to Australia, from a legal point of view, as Canada. We are both common law federations, with multicultural policies, sharing the English language and boasting of a century of constitutionalism.

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In some respects Canada began in an advantageous way, when compared to Australia. The *British North America Act* of 1867 afforded to the federal Parliament in Canada exclusive jurisdiction over "Indians and lands reserved for Indians". When the Australian Constitution was written in the 1890s, this provision was not followed. Instead, the law-making for the Aboriginal people (and the Torres Strait Islanders) was substantially reserved to the States. By our Constitution, Aboriginals did not even have to be counted in the national census. The power to make special laws for people of any race excluded laws for the Aboriginal people. It took a referendum in 1967 to expunge this affront from the Australian Constitution and to steer successive federal Parliaments and Governments into the provision of special laws for the indigenous people of this country.

The settler societies which were established by the British in the four corners of the world are still in the process of adjusting their legal systems and societies to afford greater respect for, and protection of, the indigenous peoples who were substantially displaced. Canada has two large groupings of such peoples: the native Canadians and the Inuits. Similarly Australia has two large groupings - the Aboriginal people and the Torres Strait Islanders. Both Canada and Australia have been on a journey of discovery and reconciliation in relation to their indigenous peoples. Both of our countries have come to realise, increasingly in the past 20 or so years, the riches of cultures which the indigenous people have contributed to our societies and which they can contribute in the future, given half a chance. Important decisions in Canada on the land rights of the indigenous peoples have stimulated and guided court decisions in this country. In the great courtroom not far from where I speak, the High Court of Australia handed down its landmark decisions in the *Mabo Case* and the *Wik Case*. I do not doubt that there will be many more decisions of great importance for the indigenous people of Australia as our citizens modify their laws and attitudes to a new recognition of the dignity, respect and rights of the original people of this land. It is right that we are now reflecting upon an amendment of the Australian Constitution which will acknowledge specially the position of the indigenous people of this continent. But when we see an exhibition such as this, we realise the global setting of the displacement of indigenous people, their resilience and their preservation of their spiritual identity.

It is unsurprising that the *Sun Mask* by James Johnnie which is displayed in this exhibition, was chosen as the logo for this year's National Multicultural Festival in Canberra. Although they are separated by a great ocean, the indigenous peoples of Australia and the indigenous peoples of Canada share much in common. They are coming into a new golden age, lit by the sun of justice. The quest for justice is something they share together. We must share that quest too.

THE EXHIBITION

What do we see in this exhibition? There are 40 objects which have previously decorated the Chancery of the Canadian High Commission in Canberra. It is wonderful that they are now being exhibited for Australians and other visitors to the High Court. Here is the work of 25

artists. They represent 9 of the First Nations in Canada. There are masks, carved bowls, combs and cedar bark weaving - the bark described as astonishingly soft. From the mighty cedar trees the women of the First Nations of Canada would craft the objects of the household and the clothing for themselves and their children. The men were said generally to go naked in pre-history times. But I venture to suspect that when the Northern cold came they too shared a little of the bark weaving made by the women.

This exhibition gives us an insight into the people and the lands of Western Canada. The people are variously described as people of the cedar or people of the salmon. Cedar, strong. Salmon, swift. Their societies were stratified. They were made up of nobles, commoners and slaves. Little wonder that they got on well with the British and secured a greater measure of constitutional protection from them than did the indigenous people of this continent. Theirs was a world of extended families and matrilineal descent.

Their land is magnificent: a place of mighty scenery as all who have visited would remember. I recall my first visit to Western Canada. I was attending a conference of the Canadian Bar Association. With Lord Goff of Chieveley and my Canadian host, we drove from Vancouver's city up on to the escarpment of the Rockies. There in the land of the cedar we saw the most beautiful scenery on earth. Great valleys, mighty rivers, towering mountains and everywhere the cedar. At the legal conference in Edmonton, I was presented with a magnificent head-dress of the Indian tradition. I have a treasured photograph showing Lord Goff of Chieveley and me bedecked in all our splendour. He looks a trifle embarrassed. I, on the other hand, felt enraptured by the decoration. I was even tempted to wear it into court and to wear it to the opening of this exhibition. Alas, modesty eventually got control of me. But the love of bright colour and of splendid decoration is shown in the masks which are the centrepiece of this exhibition.

It is interesting to reflect on the common links of humanity. The people of the cedar considered that their tall trees were growing up into the sky itself. Trees were a means of lifting the spirits of the people up beyond their mortal concerns. That is not so dissimilar to the tradition of the European people. Why else did they build the spires of their cathedrals and the other great public buildings than to lift up the sights of the people from the sometimes shabby banalities of ordinary life?

And then there are the masks. Lawyers who wear their strange wigs fully understand the tradition of the mask. The *Sun Mask*, and others in this exhibition, were regarded by the people of the cedar as a way, at the end of autumn, to retain the sun and its happy face and to frighten away the cold. This tradition also has its parallels in Europe. The beginning of Lent is preceded by a festival, dating from pre-Christian times. That festival is now known as the Mardi Gras. I am sure that many of the participants in last Saturday's celebration of diversity in Sydney's Gay and Lesbian Mardi Gras would feel completely at home with some of the masks in this exhibition. And some of the participants were as naked as the native people of the First Nations of Western Canada were said to have been in the days before the more

modest settlers came with their intrusive ways.

So this is a wonderful exhibition which I welcome to the building of the High Court. Such exhibitions are greatly appreciated by the Justices and officers of the Court. They bring people into this building. It is a great public building. It is our hope that funds will be provided by Government so that the High Court building can once again be open on weekends and on public holidays. It would be unthinkable that the Parliament should be shut for lack of funds. This important public space also belongs to the people. The people would not, I believe, begrudge the funds to open it to visitors and especially to see exhibitions like this.

When we look at the masks and artefacts in this exhibition, coming from so far away, we see the things in common that are shared by all members of the human family. Brothers and sisters everywhere. The descendants of the settlers and the descendants of the indigenes. It is right that the exhibition should be presented here. For this is a building for all people, bringing law and justice to all, without discrimination and upholding respect for the dignity and rights of everyone.

As a Justice of the High Court of Australia, as a citizen and as a friend of Canada and all its peoples, I am proud to open this exhibition.