

WILLIAM COOPER'S DESCENDANT USED "BOLT LAW" TO CHALLENGE RACIAL VILIFICATION

By Barbara Miller 10.12.13

'We're so pleased with the outcome, for all our people,' said Dr Atkinson, an academic. 'Especially for the younger people coming through, who really shouldn't have to deal with that continual stuff to have to justify their identity.'¹

This was the response of one of the applicants, Dr Wayne Atkinson, a descendant of pioneer Aboriginal civil rights campaigner, William Cooper. It referred to the case of Eatock v Bolt where columnist Andrew Bolt was successfully taken to court by a group of Aborigines using Section 18C of the Racial Discrimination Act. Many conservatives were upset at the outcome and Attorney-General, Senator George Brandis, has set it as his first task in government to remove or weaken Section 18 C which has become known as "Bolt's law".

There has been a flood of objections to the government's plan to abolish or emasculate race hate laws. Leaders of Indigenous and ethnic groups have combined in signing a statement of concern about the proposed changes to the Racial Discrimination Act - the National Congress of Australia's First Peoples, the Executive Council of Australian Jewry, the Arab Council of Australia, the Chinese Australian Forum, the Australian Hellenic Council, the Lebanese Muslim Association and the Armenian National Council of Australia.²

Section 18C is not a threat to free speech and its removal or watering down could open the door for more racial harassment. Free speech should not include freedom to harass or vilify on the basis of race. Section 18D deals with freedom of speech concerns already and provides a number of freedom of speech defences to 18C – exempting artistic works, conduct for any purpose in the public interest, or a fair comment on any matter in the public interest. It has been used successfully in some high profile cases.

Australia/Israel & Jewish Affairs Council policy analyst Daniel Meyerowitz-Katz mounts some excellent arguments as to why Section 18C of the Racial Discrimination Act should not be repealed or weakened as is proposed by the Abbott government.

Meyerowitz-Katz says: "Most importantly, 18C does not make it unlawful to merely say something that might be construed as racist and hurt someone's feelings. What is unlawful is doing something "because of" the race/ethnicity of a person that is reasonably likely to offend them. The issue is not that anyone's feelings are hurt; it's that someone is targeted for harassment because they happen to be of a certain ethnicity."³

I have below an excerpt from my book on William Cooper which looks briefly at the issue of Aboriginal identity and the Andrew Bolt case.

¹ Quinn, Karl "Bolt loses high-profile race case." The Age, September 28, 2011

² Swan, Jonathan, Sydney Morning Herald "Race groups express anger with planned change to Racial Discrimination Act" in National Indigenous Times 4.12.13, P2

³ Meyerowitz-Katz "Anti-abuse Laws Pose No Real Threat to Freedom of Speech" The Australian 9.12.13, P12 <http://www.theaustralian.com.au/national-affairs/opinion/antiabuse-laws-pose-no-real-threat-to-freedom-of-speech/story-e6frgd0x-1226778213812#>

Chapter 10 – ‘Eugenics, Stolen Children and Black Armbands’ in “WILLIAM COOPER: GENTLE WARRIOR, Standing Up for Australian Aborigines and Persecuted Jews” by Barbara Miller.

ABORIGINAL IDENTITY

How frustrating would this be? It happened during William Cooper’s productive last years in Melbourne but this man was really bounced about by the system:

“In 1935, an Australian of part Indigenous descent left his home on the local reserve to visit a nearby hotel where he was ejected for being Aboriginal. He returned home but was refused entry to the reserve because he was not Aboriginal. He attempted to remove his children from the reserve but was told he could not because they were Aboriginal.

He then walked to the next town where he was arrested for being an Aboriginal vagrant and sent to the local reserve. During World War II he tried to enlist but was rejected because he was an Aborigine so he moved to another state where he enlisted as a non-Aborigine. After the end of the war he applied for a passport but was rejected as he was an Aborigine. He obtained an exemption under the Aborigines Protection Act but was now told he could no longer visit his relatives as he was not an Aborigine. He was later told he could not join the Returned Servicemen’s Club because he was an Aborigine”.⁴ This is ridiculous but also humiliating and confusing.

Racist definitions of Aboriginal identity were pervasive from 1910 to 1940 e.g.:

- A full-blood was a person who had no white blood
- A half-caste was someone with one white parent
- A quadroon or quarter-caste was someone with an Aboriginal grandfather or grandmother and
- An octoroon was someone whose great-grandfather or great-grandmother was Aboriginal

These terms were used until about the 1960s and are considered offensive and racist.⁵

A Report on a Review of the Administration of the Working Definition of Aboriginal and Torres Strait Islanders in 1981 proposed a new definition which was adopted by all Commonwealth Government Departments. It said:

An Aboriginal or Torres Strait Islander is a person

- Of Aboriginal or Torres Strait Islander descent
- Who identifies as an Aboriginal or Torres Strait Islander and
- Is accepted as such by the community in which he (she) lives

Aboriginal people usually identify themselves as to which country or tribe they are from. There is also a general name for Aboriginal people in different states e.g. Queensland (Murri), New South Wales (Koori, Koorie, Goorie, Coorie), Victoria (Koorie), Tasmania (Palawa, Koori), Northern Territory (Yolngu in the top end and Anangu in central), South Australia (Nunga, Nyungar, Nyoongah) and Western Australia (Nyungar, Nyoongar).

Identity can be a struggle when Aboriginal people are continually questioned about it, particularly if they are fair. However it is a social definition rather than a racial one.

⁴ Spencer, Stephen (2006). “Race And Ethnicity: Culture, identity and representation” P 33–34: Routledge

⁵ “Aboriginal Identity: Who is ‘Aboriginal’?”

<http://www.creativeshirts.info/aboriginalculture/people/aboriginal> P1

Three Aboriginal people explain below what it means to them to be Aboriginal and the judgements they face if they are fair:

“What is Aboriginal? According to most white experts and the media, it’s a black person who lives in a remote community, has social issues and claims benefits that are way above what they deserve. So being Aboriginal but white, fairly socially adjusted and living in an urban area, where do I fit in?”

Bindi Cole, Aboriginal artist⁶

“Aboriginal people are not a skin colour, we are a community and people by history, spirituality, locations, country, thinking, politics, treatment and cultures and most importantly, our stories.”

David Towney⁷

“.....I grew up in a place where everyone knew I was Aboriginal and part of an Aboriginal family, but the moment I moved outside that environment, I found I had to constantly explain away that aspect of my identity....

How do you begin to explain to someone that you have started to question everything you ever believed about yourself because you are required to defend it so often?...

Over the years education has continued to unlock me for me. I am Mark McMillan and I am a lot more than just a ‘white’ black man. Although being Indigenous – or more importantly, a proud Wiradjuri man – is fundamental to my own sense of humanity, I am much more than that dimension.

Aboriginal people of mixed descent feel the double sword with which Australian society judges them. When they blend in or are successful, it is their ‘white identity’, but they are Aboriginal if they go to jail, die early or suffer from alcoholism.”

Mark McMillan⁸

The issue of Aboriginal identity and white attitudes to who is an Aboriginal comes up again and again but recently it caused a furore when Herald Sun columnist Andrew Bolt challenged the identity of fair Aborigines who are high achievers. One of them happened to be a descendant of William Cooper, Dr Wayne Atkinson, a university lecturer.

The nine Aborigines Bolt singled out took him to court for racial discrimination in a group action and Bolt lost the case. They chose not to sue for damages but asked for a public correction and an undertaking not to print similar material.

This is the tenor of Bolt’s comments about lawyer, Larissa Behrendt for example:

“She’s won many positions and honours as an Aborigine, including the David Unaipon Award for Indigenous Writers and is often interviewed demanding special rights for ‘my people’. But which are

⁶ Cole, Bindi “A colide-ascop of colour” National Indigenous Times 10/7/2008, P25,
<http://www.creativeshirits.info/aboriginalculture/people/aboriginal> P6

⁷ Towney, David “Aboriginality – More than the colour of skin”, letter to Koori Mail, 444 p27
<http://www.creativeshirits.info/aboriginalculture/people/aboriginal> P7

⁸ McMillan, Mark “Late Starter Finds His Identity” Reconciliation News issue 13/2008 pp6-7,
<http://www.creativeshirits.info/aboriginalculture/people/aboriginal> P7

'yours', exactly, mein liebchen? And isn't it bizarre to demand laws to give you more rights as a white Aborigine than your own white dad?"⁹

As Marr points out, this is inaccurate journalism because Larissa's father is black Australian, not white German and all nine of the applicants had been raised as Aboriginal all their lives. Bolt's defences of freedom of speech, or that he was not writing about race or that he didn't intend offence did not convince the judge.¹⁰

Quinn reports, "Justice Mordecai Bromberg delivered a stinging judgment in which he found Bolt had contravened section 18 (c) of the Racial Discrimination Act in two articles published in the *Herald Sun* in 2009.

'I am satisfied that fair-skinned Aboriginal people (or some of them) were reasonably likely ... to have been offended, insulted, humiliated or intimidated by the imputations conveyed by the newspaper articles,' Justice Bromberg said to a packed courtroom in Melbourne."¹¹

.....Outside court, the applicants in the case, including Geoff Clark, Wayne Atkinson and the initiator of the case, Pat Eatock, were jubilant. (Bindi Cole and Anita Heiss were among the nine).

'We're so pleased with the outcome, for all our people,' said Dr Atkinson, an academic. 'Especially for the younger people coming through, who really shouldn't have to deal with that continual stuff to have to justify their identity.'

'It was never about free speech, it has always been a question of professionalism, and the reality is that the original articles were not professional journalism,' said Ms Eatock, a 73-year-old Aboriginal activist.

'The sword of justice has struck, and cut off the head of the serpent,' said former ATSIC chairman Geoff Clark. 'Let's hope it doesn't grow two heads.'"¹²

Bolt's articles attacked 'political' or 'professional' or 'official' Aborigines who could pass for white but chose to identify as Aboriginal for personal or political gain to win prizes or jobs for 'real, black Aborigines'. The Aborigines referred to said they were offended, upset and demeaned by these articles.

Because Bolt said they had multiple identities open to them, the case became unofficially a test of definitions of Aboriginality. As it was argued, though, it was a test of the balance between free speech and protection from offence. Justice Bromberg maintained that they should be able to identify with their race without fear of public disdain or loss of esteem.

It is interesting that most of the public comment in this case was in support of the Aborigines concerned.

⁹ Marr, David "In black and white, Andrew Bolt trifled with the facts", [Sydney Morning Herald](#), September 29, 2011, P1

¹⁰ *ibid*

¹¹ Quinn, Karl "Bolt loses high-profile race case." [The Age](#), September 28, 2011

¹² *ibid*