

Colin Roderick Memorial Lecture 18 July 2019

How We Keep Our Pens Mighty by Bri Lee

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I travel around this beautiful country speaking about issues of law and sexual violence, and I cannot do so without acknowledging that Aboriginal and Torres Strait Islander women are three times as likely as non-Indigenous women to have experienced violence. That despite Aboriginal and Torres Strait Islanders over the age of 18 making up around 2% of our population, they represent 26% of total prisoner population. That we are seeing absolutely no improvements in the rates of Aboriginal deaths in custody, that half of those deaths are of prisoners not 16 years of age or older.

I wrote *Eggshell Skull* because I knew I was getting the carpet treatment from the law, and it still nearly broke me. I'm white, English is my first language, I'm able-bodied, I've got steady work and housing, my dad used to be a cop, I'm literally a lawyer, and my matter only took two years, where many take three or four or five, and still there were times I wanted to die, when I came close to dropping the charges. I don't know how we expect people who didn't have what I have to go through that system.

I was a judge's associate in the Queensland District Court for one year in 2015. The judge I worked for did mostly criminal law, and in the District Court that means sex offences. Every week was another trial and a handful of new sentences for either child sexual abuse or adult sexual assault. That time became the first half of *Eggshell Skull*. When I started that job I was fresh out of university and though I loved reading and writing, I was sure I'd go on to practice law. As an associate you are responsible for many miscellaneous tasks in the courtroom—pulling jurors' names out of the barrel, marking exhibits of evidence—and you also keep a meticulous record of the minutes of each proceeding. Within about a fortnight I was carrying around a notebook of my own, a simultaneous and silent commentary. Scaps of dialogue, faces and impressions, sketches of a barrister's shiny dollar sign cufflinks, feelings and thoughts.

I was so shocked by what I was seeing and yet was always the youngest and most inexperienced person in the room. Not only the descriptions of the alleged offending and the witnesses' testimonies, but also seeing the greasy, rusty cogs of our legal system from the inside. The irony I felt in that role was that although every single part of a legal proceeding was scrupulously recorded, nobody was bearing witness. Seeing the way sexual harassment is rife in the legal profession, and how we're not even remotely close to our judiciary being representative of our population, but then also seeing how the people who made laws and practised law affected the way the law was done. That the system is as fallible as the humans who created it. That there is no such thing as objectivity or impartiality, and that justice is

never blind. That it is one thing to acknowledge with a begrudging nod that the bar might be a bit of a boys' club and another entirely to examine a legal system drafted in a time when women and children were under the dominion of men clearly



We cling to stories. They are the only way we seem to be able to feel and learn when we expect and demand that people with stories to tell are the ones who must advocate for change we are cruel. Rosie Batty's son, Luke, was murdered by his father, and yet we ask her to solve domestic and family violence. Why do we need her to care that a woman a week is killed by her current or former partner? Behrouz Boochani is an innocent man trapped

barrister mounted a successful 'mistake of fact' defence because a second jury couldn't convict that man and because I will never know what happened to Jessica.

So what does it mean that some people's first time speaking in public is at their own rape trial? What do you think it means when powerful men can afford the best lawyers and strong arm survivors into non-disclosure agreements when they make civil law claims for sexual harassment?

What does it mean that Indigenous literacy rates in this country are so dire that only 34 per cent of Indigenous year five students in very remote areas are at national minimum reading standards, and yet when the entire Indigenous community together and told what they want, and how they can heal, we said the Uluru Statement from the Heart was an impossibility? Why do you think the government doesn't like imprisoned asylum seekers on Manus Island having mobile phones? Because if they have communication devices, like Behrouz, they use them to write books, insist we recognise their humanity, and then they win our nation's richest literary awards.

Before we can ask how we might keep our pens writing we must first ask who is even allowed a voice, and in which forums.

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I will never forget the precise moment I decided to try to get justice for myself. We were in Warwick, and a man had just read out his victim impact statement in the court, and his wife was there supporting him. Decades earlier, when he was a teenager, his stepfather abused him quite horrifically, and he had just had that man convicted on all counts. And he was so brave reading that letter out. He didn't know I was there listening the way I was. I will never forget him. The only two parts of my story that make me cry any

For me, the biggest, most uncomfortable question of the past four years, but particularly the 12 months of advocacy leading to 9 July, is this: who here has money and power, and how are they trying to keep it? Never was my enemy more revealed to me; never was this question more clearly answered, than when I read a list of names of the people who wrote character references for George Pell after he was convicted.

Former prime minister John Howard's letter described Pell as a person of both high intelligence and exemplary character, saying he was a 'lively conversationalist who maintains a deep and objective interest in contemporary social and political issues'. Howard was prime minister the year I was abused. To my knowledge, at least one of my parents, at least once, voted for him. Why did he write that letter? Of all the causes a former



the Association considers that a person should not be liable to conviction for a sexual assault in circumstances where he or she honestly believes that there is consent. Expressing the same point in a different way, the criminal law should ~~not~~ make a person guilty of a sexual assault where, notwithstanding such an honest belief, the accused failed to satisfy some ~~objective~~ standard. It is unjust to make an offender who honestly believed there was consent but lacked reasonable grounds ~~for~~ liable to the same maximum penalty as the offender who knows that consent is absent or is indifferent as to lack of consent.

...

The criminal law should not deem an accused to know that there is absence of consent when the accused actually ~~believes~~ consent is present, even if one reason for that mistaken belief is ~~self~~ induced intoxication (pp. 5, 6)

These pens are mighty. They represent the establishment fighting for the establishment. Their submission references countless other judgments and precedents; their arguments supported by laws made decades or centuries earlier by other people in power who look and sound like them. The most common riposte I have ~~heard~~ ~~in~~ ~~the~~ ~~campaign~~ ~~in~~ ~~Queensland~~— apart from personal attacks ~~is~~ that these laws are important and fair and must be protected because they have been this way for a long time. It's like we're having different conversations. These laws ~~are~~ being reviewed because they are outdated ~~is~~ ~~not~~ an argument to refer to even older judgments and older laws, as though legal minds in the past had special knowledge that we must adhere ~~to~~. Unless you're rich and powerful the past is an awful place. I find myself confused, and so I ask, who here has money and power and how are they trying to keep it?

The thing is that in late 2015 when I went to the cops I thought I was taking on a man, and then I suffered the ~~slow~~ and terrible realisation that I was taking on a system. This cruel reckoning is ~~one~~ that all survivors go through if they decide to speak out. When we fight for justice for ourselves we are also fighting an imbalanced adversarial system, ~~funded~~ by a imbalanced department of justice, ruled ~~over~~ ~~by~~ the ministers who believe a convicted abuser has ~~an~~ exemplary character

One might easily wonder why any of us try at all. I think more of us are trying than ever before because ~~we~~ ~~now~~ have each other's stories. Because the internet has collectivised previously ~~disempowered~~ and disconnected groups of people who now realise their cases are not 'isolated incidents' but patterns of behaviour. Because the church is losing power. Because women are gaining power. Because finally some other people are getting a bit of a say, maybe a voice.





On the afternoon of 9 July