

## Noel Pearson – Boom and dust lifestyle – The Australian, 3 February 2007

Mammon led them on Mammon, the least erected spirit that fell From Heaven, for even in Heaven his looks and thoughts

Were always downward bent, admiring more  
The riches of Heaven's pavement, trodden gold,  
Than aught divine or holy else enjoyed  
In vision beatific. By him first,  
Men also, and by his suggestion taught,  
Ransacked the centre, and with impious hands  
Rifled the bowels of their mother earth  
For treasures better hid. Soon had his crew  
Opened into the hill a spacious wound  
And digged out ribs of gold. Let none admire  
That riches grow in hell; that soil may best  
Deserve the precious bane.

- John Milton, Paradise Lost, Book I, lines 678-692

OVER the course of the Howard decade, each and every Australian has been reminded that the country's wealth is still very much sourced in its minerals. If we had come to believe since the economic reforms of the 1980s that our prosperity no longer rode the sheep's back, the extraordinary balance sheets presented by Treasurer Peter Costello at successive budget nights have driven home that, make no mistake, we are China's quarry.

There is not an Australian who has not benefited from this astonishing boom. For shareholders watching their stocks it has been far from all ordinary, it has been vision beatific. From the high wages caused by the insatiate demand for skilled tradespeople and professionals and the provision of services and infrastructure in support of the resource industries, to the welfare payments to indigenous people living (and mostly dying) in the shadows of this efflorescence of development - it is mining revenues that pay a large share of the bill.

Not since paradise was lost has rifling the bowels of mother earth been more lucrative.

This boom was preceded by the contentious changes to land titles across the continent resulting from the High Court's Mabo decision on native title in 1992 and the passage of the Native Title Act by the Keating government in 1993. In theory Australia's indigenous peoples should therefore have been prime beneficiaries of the minerals boom of the past decade.

They have not been.

Last Tuesday The Australian reported research by Ciaran O'Faircheallaigh, minerals economist at Griffith University. O'Faircheallaigh has analysed 45 agreements negotiated in the past 10 years, and he concludes that half of the indigenous land use agreements "were either basket cases that should never have been entered into" or had delivered few cultural and monetary benefits to Aborigines. Many Aboriginal groups

were no better off, or even worse off, than in the absence of any agreement with the companies concerned.

O'Faircheallaigh said this week: "We found that a small number of the agreements, about a quarter, are delivering very substantial outcomes to Aboriginal people. However, at the other extreme, we found that about half of the agreements have little by way of substantial benefits. They're either doing very well in a minority of cases, or in a majority of cases, they're not getting substantial benefits."

There is no doubting that O'Faircheallaigh is right.

While there are more or less honourable agreements such as those made by Rio Tinto with indigenous communities in the Kimberley (Argyle diamond mine) and on western Cape York Peninsula (Comalco bauxite mine), the great majority have been a case of mining companies, in American parlance, taking candies from indigenous babies. The sheer shonkiness of many of the deals mirror the process by which indigenous peoples have had their traditional lands deforested by Asian logging companies throughout Melanesia, with very little to show at the end of the day. The only difference between Papua New Guinea and the Solomons, and, say, the Western Australian goldfields or the NSW Hunter Valley and central Queensland's coalfields, is that the Australian deals take place within a clear legal framework.

O'Faircheallaigh cites cases of big projects, which will deliver billions in returns to shareholders and the coffers of governments, where companies have agreed to provide \$100,000 for the life of the project. If you want to see the starkest contrast of benefit and burden no place is as egregious as the Pilbara, where two of the world's largest companies - BHP Billiton and Rio Tinto - are digging out ribs of gold, and the blackfellas live in the miserable shadows of spacious wounds.

Yes, Rio Tinto under former chief executive Leon Davis took steps to ameliorate this unjust situation, but the company has since tended to bank on presentation and less on substance. BHP Billiton does not even try.

If there is no doubt that we have the astounding situation where indigenous communities are not engaged in and enjoying the benefits of a mining boom in their backyards, there will be disputes as to the reasons for this.

My views on the reasons for this failure are as follows:

First, the legal framework that applies to mining and native title severely disadvantages indigenous landowners. Section 38 of the Native Title Act explicitly says that in arbitrating an application for mining, the National Native Title Tribunal "must not determine a condition ... that has the effect that native title parties are to be entitled to payments worked out by reference to:

(a) the amount of profits made; or

(b) any income derived; or

(c) any things produced."

You might as well make clear in the law that the tribunal can only determine beads and mirrors as acceptable outcomes from arbitration, because that is in effect what it has been doing.

The mining lobby has been quiet on land rights for the past decade. Having secured an advantageous legal framework through the bitter conflicts over the Native Title Act in the '90s, they have learned that ideological opposition to land rights is unproductive for its members.

As long as member companies are winning hands-down through the so-called agreement-making process, they have had no interest in conflict.

The federal Government has continued to legislate to weaken the indigenous position, both in terms of the procedural rights of landowners and the institutional support they receive from land councils. They are now proposing another round of amendments that further threaten the capacity of indigenous people to deal with developers.

Second, we have yet to work out how best to deal with the clash between communal land title and the demands of modern development, of which mining is the most obvious. There is often conflict and contradiction.

Mining royalties pose fundamental challenges to Aboriginal culture, and can end up being indistinguishable from passive welfare in their effect. But this is not just a culturally specific problem; the problems posed by rentals and windfalls are well known to economic theory. Some of the most dysfunctional nations in Africa are those richest in resources, leaving beleaguered peoples to reflect that riches do indeed grow in hell and some treasures are better hid.

I will leave for another day a discussion of the problems involved in reconciling resource development and Aboriginal culture, including communal land title.

Third, and related to this last point, is the "fistful of dollars" mentality that predominates, both in the minds of indigenous individuals and groups and those of developers who exploit febrile expectations of short-term gain.

The idea that royalty agreements should automatically result in cash distributions to individuals is a powerful animator of disputations and conflicts, within landowner groups and between them. Land councils seeking good outcomes invariably face an enormous native cat-herding challenge as fragmentation and overlapping claims are the order of the day, with unscrupulous lawyers picking off individual cats like marauding dingoes.

Fourth, there is limited commercial and financial capacity within land councils charged with supporting landowners. The typical lawyer acting for indigenous groups is a master of pedantic, Geoff Boycottish back-and-front-foot defence, but the drive or the pull or the hook is simply not in their repertoire. Meanwhile the mining companies have Adam Gilchrist flashing the blade for them, and there is no contest.

By way of solution I put forward two thoughts.

First, I think that indigenous people, governments and industry need to decide whether indigenous groups should benefit from procedure or through guaranteed benefits.

I would venture that the transaction costs involved in negotiation and arbitration procedures set out in legislation are more often than not higher than the benefits which indigenous people get at the end of the day.

At the moment the law provides for indigenous people to seek benefit through procedure. A statutory scheme for royalty payments could guarantee benefits to indigenous landowners and free up the negotiation and arbitration procedures from arguments about financial compensation.

Those few groups who have done well or will potentially do well from procedural rights may oppose a guaranteed benefits scheme, but for the vast majority who are losing out, guaranteed benefits would be a vast improvement on the present situation.

Second, we need to get away from the fistful of dollars paradigm to an integrated economic development paradigm. Resource development should be seen as an opportunity for economic development for indigenous communities, and cash distributions to individuals is never economic development.

Education, employment and business development are the principal means by which indigenous people can benefit from mining without incurring the real problems that resource rentals too often entail for people who hold communal title to land.

John Milton was a radical republican. I doubt that his glorious epic, and particularly the incendiary passage extracted at the beginning of this article, is proudly framed in the boardroom of the Minerals Council of Australia or in Rio's palatial headquarters at St James's Square in London.

I am not an opponent of mining and in fact firmly believe that sustainable resource development is reconcilable with indigenous social and cultural sustainability in remote Australia and not a burden. Indeed, it is imperative that this reconciliation is effected, because without the opportunity of economic development indigenous people have no future in remote Australia.

The present situation is that the terms upon which mining takes place in Australia wreak more burden than benefit to indigenous peoples, most of whom live in the dust of the development.

If these issues seem too far removed from the average Australian in Sydney or Melbourne, or indeed Brisbane and Perth, then we should consider that we all take benefit from mining: in no small way the billions of dollars of tax cuts to Australia's middle and high income earners come courtesy of the ransacking by the impious hands of Mammon's most primary industry.