

own conclusions about a religious life which was not "primitive," but rather merely different, and interesting.

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McRae, Heather, Garth Nettheim and Laura Beacroft: *Indigenous Legal Issues*. Sydney, Australia: Law Book Company, 1997, ISBN 0-455-21468-9, AUS \$ 85.00.

On 24 December, 1996, the High Court of Australia handed down its decision in the case of *Wik Peoples v. State of Queensland and Others*.¹ This decision (four judges to three) found that Native title was not necessarily extinguished by the granting of a pastoral lease and that it was possible, in some circumstances, for the two to co-exist. Reaction to the decision was polarized. Indigenous people celebrated the fact that their rights, eventually recognised in the long awaited *Mabo (No 2)*² decision, were not to be summarily extinguished, while pastoralists complained that the decision denied them certainty. In response to the *Wik* decision the government came up with a ten point plan which essentially seeks to diminish the incidents of Native title by increasing the rights attaching to pastoral leases. The plan would also prevent Native title claims in regard to unclaimed Crown land in city areas and in regard to water (cf land).

On 26 May, 1997, another significant event occurred in Australian Indigenous/Non-Indigenous relations. The Human Rights and Equal Opportunity Commission's report on the stolen generation of Aboriginal children, entitled *Bringing Them Home* (Human Rights and Equal Opportunity Commission, 1997), was tabled in Federal Parliament. This report detailed the impact and effects of the policy pursued by Federal and State governments between approximately 1883 and the early 1970s, a policy which involved the forcible removal of Indigenous children from their families. The report detailed how these children were sometimes placed in institutional homes while at other times they were re-located to farms where they worked as labourers or domestic servants. Still others were adopted out. Many never saw their parents again. Almost all grew up with no understanding of or support from their cultural heritage which was denied them. The evidence contained in the report was damning, heart-wrenching and painful. For example, it included the following extract which is the evidence of a Northern

Territory man moved to Kahlin Compound at three years of age, who in the 1920s lived at the Bungalow, where about 50 children and 10 adults lived in three exposed sheds, crowding together on the floor to sleep at night. He said:

There's where food was scarce again. Hardly anything... night time we used to cry with hunger, y'know lice, no food. And we used go out there to the town dump... we had to come to scrounge, at the dump, y'know, eating old bread smashing tomato sauce bottles and licking them. Half of the time our food we got from the rubbish dump. Always hungry there.

That's another thing culture was really lost there, too. Because religion was really drummed into us, y'know, when we'd be out there and we'd have a knuckle-up and that, we were that religious we'd kneel down in prayer... We had to pray every time you swear or anything, you'd go down on your hands and knees... they pumped that religion into us (*Ibid.*:4).

The report concluded that the policy of separating Indigenous children from their parents had amounted to genocide. It then made a series of recommendations: the key ones being that the victims of this policy receive both compensation and an apology.

The Premiers of all states of Australia offered apologies. The Prime Minister of Australia refused to apologize officially. He gave a somewhat delayed personal apology which was criticized as being merely personal in nature. He expressed sorrow for the hurt felt rather than the actions taken. He took the view that present-day Australians had no need to apologize for the actions of other people long ago. In his speech in the Parliament on a reconciliation motion, the Prime Minister also said that "the pendulum had swung too far"³ towards Aboriginal people after the *Wik* decision. Further the Prime Minister and members of his cabinet also ruled out compensation as an option.

Whilst the Prime Minister's view is clearly shared by many Australians, there is a significant number who strongly disagree with him and there would appear to be a slow awakening of the Non-Indigenous consciousness in regard to race relations. In part this awakening has somewhat ironically been assisted by the outspokenness of more xenophobic and racist politicians on issues of immigration and race relations. Indeed many of the traditionally more conservative voices of White Australian have recently been unified in their condemnation of past practices. For example, when the President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, a former High Court judge, addressed the Australian Reconciliation Convention in Melbourne in May, 1997 he clearly aligned

himself against the forces who seek to undo the effect of the *Wik* decision. Sir Ronald said,

The [Aborigine's] land was stolen. The children were stolen and what is the third act going to be? Are we witnessing in the controversy over *Wik* and the ten point plan a completion of the first act—the dispossession of land?⁴

Sir William Deane, the Governor General of Australia, was subtly staunch, saying, "I want to say how profoundly sorry I personally am that things like that were ever done."⁵ Further, he contradicted the Federal Government by expressing the opinion that a key section of the Constitution could only be used for the welfare (not harm) of Indigenous people.

Distinguished church leaders have also recently expressed their regret that the nation has not officially apologised for its past discriminatory policies and that it does not intend to provide compensation.⁶

If letters to the editors of major newspapers represent, in any way at all, the voice of the Australian people, we can also observe in those letters a developing awareness of the Australian community's horror, amazement and shame concerning past policies and laws relating to Indigenous people.⁷ Daily newspapers have contained not only individual apologies but also critical comment. People have questioned how it is possible for a government to compensate those who hand in their illegally held guns but not compensate others who suffered the deprivation of family and culture.

Yet Australians and indeed the international community generally have had no need to remain uninformed about Indigenous legal issues. Since 1991 we have had available to us an excellent book on the subject by Heather McRae, Garth Nettheim and Laura Beacroft.⁸ Happily, with the assistance of Luke McNamara, the second edition, now called *Indigenous Legal Issues*, has now been released. Readers will not be disappointed.

Although its focus is clearly legal, anthropological, historical and sociological materials are also included. The effect is riveting reading for both lawyers and non-lawyers alike. Non-lawyers should not be put off by the subtitle of *Commentary and Materials*. This is a technically correct description of its contents, but this book is far from a dry, didactic course oriented text!

The book spans a variety of topics sensibly, starting with some history but then weaving its way through subjects such as the intersection of Indigenous and Non-Indigenous Law, Indigenous Sovereignty, Land Rights Legislation, Native Title, Racial Discrimination, Criminal Justice and Child Welfare.

One of its virtues is the wide variety of materials that it uses. For example, it relies on statistics from a range of sources including those from

ATSIC (The Australian and Torres Strait Islander Commission) which reveal simply and confrontingly the differences between Indigenous and non-Indigenous people in regard to infant mortality, communicable diseases, alcoholism and hospital discharge rates. It also includes a reproduction of a "dog tag", officially known as a Certificate of Limited Exemption, which exempted Aboriginal people living outside Reserves from the provisions of the *Aborigine Act*. It includes as well cartoons, maps, speeches, cases and legislation extracts. The book bombards the reader with an array of inescapable factual material in a range of forms. An astute reader is able to use this material to reach an informed analysis of the law.

Further, in asking us, in Chapter 1, to consider the appropriateness and relevance of reactions such as "guilt", "shame" and "responsibility" the text invites us into a world where the values upholding the law are tested. It also makes us address issues such as whether the law is the correct domain for dealing with the political and social dilemmas involved in race relations, for example.

In the chapter on Indigenous sovereignty we are introduced to the way in which doctrines of international law and doctrines of English law have been used to legitimize cultural, legal and geographic imperialism. Although it is pointed out that the doctrines are now largely discredited, the authors claim that any "wholesale discarding" (p.29) of these doctrines could cause a major calamity and for that reason their dismantling is likely to be "piecemeal and incremental" (*Ibid.*). Such a view is clearly acknowledged in the words of Brennan J. in the case *Mabo No 2*.

The chapter on Land Rights Legislation addresses the long resistance of Indigenous people to White invasion and reviews the development of Land Rights Legislation in the context of developing social change and awareness generally in the 1960s and 1970s. The chapter includes useful maps which highlight the territorial jurisdiction of the various Land Councils. The sections of notes and questions dotted through this chapter and many others are both provocative and informative.

In the chapter on Child Welfare, a moving account of the adoption of an Indigenous child by non-Indigenous parents is interspersed between a politician's speech in Parliament and a case note on the Kruger matter where the constitutionality of the practice of removing Indigenous children from their parents was argued.⁹ The intersection of theory and praxis is made chillingly apparent.

However, what strikes the reader throughout the book generally, but particularly in the material dealing with Native Title, is the extraordinary patience and generosity of Indigenous Australians. For example, in the negotiations preceding the passage of the *Native Title Act* (1993) through

Parliament, one cannot help but be hit by the willingness of Indigenous people to talk, to consider alternatives, to compromise and to accommodate the needs of others. It is perhaps worth observing that the much mooted proposed amendments to the *Native Title Act* (1993) involve the removal of Native Title holders' right to negotiate. If this right were removed, it would involve the Federal Government (albeit a different Federal Government) from the one responsible for the passage of the legislation through parliament) going back on the deals done around the negotiating table at an earlier time. If this did occur it would do little to assist Indigenous confidence in the reconciliation process.

Australia's regrettable history regarding Indigenous and non-Indigenous relations is blindingly obvious throughout, but the book is not one of mere rhetoric, polemic and emotion. It is a well-structured, carefully crafted book which methodically and thoroughly presents the reader with interesting and relevant material so that one can become more informed.

It is an ideal inclusion in comparative courses on Aborigines and the law or comparative Native Studies courses. It provides a rich tapestry of material on Australian Aboriginal legal, social and political issues.

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Notes

1. (1996)141 ALR 129; (1996)71 ALJR 173.
2. *Mabo v. State of Queensland* (1992) 175 CLR; (1992)107 ALR 1.
3. *The Sydney Morning Herald*, Wednesday 28 May, 1997; 141.
4. Sir Ronald Wilson quoted in *The Sydney Morning Herald*, Tuesday 27 May, 1997.
5. *The Sydney Morning Herald*, Wednesday 28 May, 1997.
6. Radio 2 BL (Australian Broadcasting Commission).
7. *The Sydney Morning Herald*, May, 1997.
8. Originally called *Aboriginal Legal Issues*, published by Law Book Company, Sydney, Australia, 1991.
9. *Kruger v. Commonwealth* (1995) 3 (83) ALB 25; *Kruger and Ors v. Commonwealth of Australia*, High Court Proceedings No M21 of 1995.