



June 2008

**Volume 3
Issue Paper No. 14**

**CONFESSIONS OF A NATIVE JUDGE
REFLECTIONS ON THE ROLE OF TRANSITIONAL JUSTICE IN THE TRANSFORMATION
OF INDIGENEITY**

Chief Judge Joe Williams

Chief Judge Williams was appointed Chief Judge, Māori Land Court in December 1999. He is also the Chairperson of the Waitangi Tribunal. He completed an LLB at Victoria University in Wellington in 1985. He was a junior lecturer in law at Victoria University in Wellington from 1986-1987, before gaining a Masters degree with first class honours in Indigenous rights law at the University of British Columbia in Vancouver in 1988. He returned to New Zealand and in 1994, he co-founded Walters Williams and Co. He specialised in litigation in areas of resource management and environmental law, Māori issues and Treaty of Waitangi claims, Māori land law, all areas of administrative and public law. In 1999 he was awarded the Māori Students Millennium Prize as a former student of Victoria University of Wellington. In 2001 he was appointed Fellow of Victoria University of Wellington Law Faculty.

This paper is based on the address by Chief Judge Joe Williams to the Native Title Conference Perth, June 2008.

Tena koutou katoa e nga uri o te hunga kua mene ki tua o te pae o maumahara. Apiti hono tatai hono, te hunga mate ki a ratou. Tena hoki koutou e te manawhenua, e Ngati Noongar, na koutou te reo powhiri, te reo karanga. No reira mihi mai ra, whakatau mai ra.

I bring greetings to you, the descendants of those who are gathered beyond the horizon of memory. May our ancestors join each other in greeting as we, their living faces, join each other this day. I offer my respect to the people whose fires of authority burn in this land. To the Noongar people, I come in answer to your

invitation and your call. I ask that you bid me welcome and grant me hospitality in your land.

I want first to record what a privilege it is to be asked to give the Mabo lecture this year. This for two reasons: First, because of the historic contribution that Koiki Mabo made to the cause of Indigenous people in Australia and around the world when he brought his application for aboriginal title on behalf of himself and his people – and I might add in this vein his contribution to the growing up of Australia. Second, because of the list of those who have given this lecture in the past – Indigenous leaders and philosophers whose impact is felt across national boundaries. It was indeed a surprise and an honour to be approached.

SOME COMMONALITIES

The Indigenous stories in Australia and New Zealand have been joined from the beginning of the colonisation story. The first Maori experience of British colonisation outside New Zealand was of Sydney and Melbourne. As an aside, the Maori names for those two cities are still Poihakena – Port Jackson, and Poipiripi – Port Phillip, even though those original names have long fallen out of use in English. This is good linguistic evidence of the depth of common experience.

The first experience of British treatment of Indigenous people outside of themselves was when Maori first saw the plight of Indigenous people in Australia – and they were appalled. This experience sparked Maori opposition to colonisation in the early years. And even amongst those who were not so disposed, there was, as a result, a high level suspicion of British motives towards Maori. It is true of course that there was a treaty in New Zealand in 1840 and that the British saw no need to engage in the same formality with respect to the Indigenous people of Australia. This difference is often used to show that the colonisation stories in the two countries have little in common. That idea is discredited. It must be remembered that for much of New Zealand's history after 1840, the Treaty of Waitangi was treated as a dead letter – a “simple nullity” in legal terms. It did not return to the consciousness of politics, the law and the non-indigenous majority until the 1980s.

From that decade on, the development of Indigenous rights law in Australia and New Zealand ran roughly in sync. Eddie Mabo won posthumously in the Australian High Court in 1992, and the Native Title Act was enacted the following year. In New Zealand, the long-running Maori fisheries litigation was settled in 1992 with the enactment of the Treaty of Waitangi (Fisheries Claims Settlement) Act of that year. The *Wik* case was decided by the Australian High Court in 1996. At the same time, New Zealand tribal leaders were bringing their land claims before the Waitangi Tribunal and to direct negotiations with the government. The first of the large tribal settlements – the Tainui raupatu settlement – had been concluded a year earlier. It settled claims relating to the confiscation of a million acres of Waikato land following the so-called “rebellion” of the Maori King in 1863. The settlement of the Taranaki confiscation claims, the South Island claims of the Ngai Tahu people and others would follow.

In the meantime, tribal leaders in New Zealand would bring proceedings to prevent the privatisation of radio and television in the absence of a guarantee of Maori language broadcasting in each medium. The proceedings would be brought by those leaders in their own names and at their own cost. They would ultimately lose the battle but in a sense win the war. Through negotiations in the course of the litigation, promises were made to fund 22 tribal radio stations and a single Maori television station. The radio stations were all operational within a short time although Maori television would not finally be established until 2004. Despite the legal and political controversy surrounding the conception of Māori television, it would prove to be a runaway success with New Zealanders of all cultures.

So the great questions of the land, fisheries and other natural resources as well as the place of indigeneity in post-colonial society were being confronted by the systems in Australia and New Zealand. In each case, the anvil upon which results were hammered out was a transitional justice forum built for the relevant national context. I use the term “transitional justice” in a particular way. I mean a process by which the new order agrees either to uphold pre-existing rights recognised in the old usurped order or to make good on those that were unfairly taken away. In Australia because of longstanding legal and political reliance on the discredited notion of *terra nullius*, a ‘surviving title’ model was used. The forum would be the National Native Title Tribunal augmented by pronouncements of the Federal Court and High Court of Australia. In New Zealand, the existence of the Treaty of Waitangi meant a reparative model was necessary with a focus on the wrongful extinguishment of rights during the colonial period¹. The forum would be the Waitangi Tribunal augmented by strategic use of the New Zealand Court of Appeal and occasionally the Privy Council in London.

BEING SCHIZOPHRENIC AND REALISTIC

Throughout this time I have been a law student, a lawyer and then a judge, and for nearly 30 years my focus has been on the anvil of transitional justice. As a Maori, that focus has been both professional and personal. Personal in the way that criminal law is personal to the burglar. I have been in the difficult and interesting position of being both the subject and object of my work. I have both the challenge of objectivity and the gift of empathy. It is these two ideas in combination that provide me with the insights I now offer. They also keep me poised at the point of sanity between idealism and realism. Most of all, they tell me that this is not the place for yet another arid doctrinal analysis of the shades of possibility to be found in treaty and aboriginal rights law in our two countries. I think that if I am to satisfy my dual personality anywhere it will be in looking past legal formalism to the ebb and flow of power underlying law. It is in the realistic assessment of the ebb and flow of power between the state and the Indigenous people that I want to spend a good part of this lecture.

¹ Native title remained a live issue in New Zealand during much of this period particularly in the two areas of fishing rights and title in the foreshore and seabed (for which see *infra*), but land claims dominated both Crown and Māori attention. Because of the historical recognition, in theory at least, of native title to land, the focus of modern land claims was the means by which those titles were extinguished during and after the colonial period.

Both Australia and New Zealand are independent post-colonial states and have been for at least two generations. They have reached the point in their development where they can address questions of transitional justice without fearing that to do so would undermine the legitimacy of the existing legal order. There are some tough but unsurprising realities for Māori and Aborigine that follow from this starting point. First, the prime and unstated purpose of transitional justice is to affirm that legal order. Affirmation is not required in law – no domestic court would find that it was itself illegitimate and none has ever done so in Australasia. But transitional justice is about moral legitimacy, not legality. So the first rule of transitional justice is that it must be achieved within the existing game and must have the effect of confirming the moral legitimacy of that game. As I have said, this purpose is usually unstated. It can remain unstated because of the prodigious weight and momentum of the political economy that now underlies the legal order. There is no need to require that its existence be formally accepted by Indigenous people as a precondition to participation in transitional justice. It has become, over time, like the air that we breathe. Yet, powerful though the status quo is, it still craves the absolution that transitional justice can provide.

The second reality is that, from the Indigenous perspective, transitional justice is about the price that can be extracted from the legal order in return for the offer of moral legitimacy. The price can have value that is easily quantifiable in modern economic terms such as the transfer of property rights or it can relate to less easily quantifiable structural change such as guaranteed access to decision-making power within the legal order. It will usually involve both in varying degrees. But the price cannot be so high as to fundamentally change or undermine the game. On the contrary, as I have said, the first purpose of transitional justice must be to affirm the game.

I call this the *yes but* principle. For example, is aboriginal title to be recognised? *Yes, but* only to the extent that Indigenous resources have not already been appropriated by the existing order. To the extent that they survive they will be protected, but no more. Or in the New Zealand context, does the Treaty of Waitangi have legal force? *Yes, but* only where Parliament says it may be enforced, and only to the extent it says so. Beyond that, it may be relevant to the exercise of executive power, but it does not bind. And it certainly does not provide a basis for leaving the final assessment of loss and damages as a result of colonisation anywhere other than with the executive – the apex of settler political power. This *yes, but* principle is the means by which the status quo is protected while offering some recognition to the Indigenous circumstance. It ensures that the recognition of past wrongs or surviving rights does not go so far as to unravel or even disrupt to any material extent, the status quo.

There is a possibility, as yet unexplored anywhere in the world as far as I know, that transitional justice can ultimately lead to the evolution – and note I say evolution, not revolution – of a subtly new game in which Indigenous modalities come to be introduced and participated in by all. But that requires additional ingredients. I want to come back to that idea at the end, but let me leave it to one side for now.

None of this analysis can be particularly surprising to anybody: transitional justice is inherently conservative in the sense that it is always predicated on the continuation of the post-colonial order and that must be particularly so when the transitional

revolution occurred more than 100 years ago. It is none the less very important to restate this idea so that we can focus on what *can* be achieved on the anvil of transitional justice, and what can't: that is, what objectives will require Indigenous peoples to adopt other strategies and techniques. This restatement also takes us to an even more important question – in fact *the* most important question: what is the ultimate goal for Indigenous peoples? I will come back to this too.

My comments here have been intentionally realistic – some might say ruthless. I certainly don't shrink from this approach. But I do not mean to disrespect the agony of the ancestors. They paid so much more than can ever be won back. Whenever I feel in danger of becoming too clinical about these things, I think back to a particular story of the second Maori King, Tawhiao. He had waged a war against imperial forces between 1863 and 1864. He had fought to a standstill. While the result of the war was inconclusive, he lost the politics. His villages were destroyed, his people scattered and he retreated into the centre of the North Island where British authority did not reach – thereafter called the King Country. A million acres of his traditional homeland was confiscated in punishment for the 'rebellion'. In the 1870s and 80s a new movement arose in a village called Parihaka in southern Taranaki, a region that had suffered even greater confiscation because of opposition to the land-hungry settler government. The leaders of the village were the prophets Te Whiti o Rongomai and Tohu Kakahi. At a time when Gandhi was only 10 years old, they pioneered the technique that later became known as passive resistance. When surveyors came to lay out settler townships and farms on confiscated land, the people of Parihaka were sent out to pull out the survey pegs and plough up the land in preparation for planting. They delayed the confiscation by a decade. Hundreds were arrested and transported to imprisonment and hard labour in the South Island.

As Parihaka reached the zenith of its political power, Tawhiao, now a fugitive, met with Te Whiti and Tohu. They invited him to join their movement. His reply is still remembered to this day as one of the most poignant descriptions of the pain he and his people had suffered through years of war and dispossession. He said:

E Whiti, e Tohu, rapua te mea ngaro. E hoki ake nei au ki te riu o Waikato he roimata taku kai i te ao, i te po.

Whiti, Tohu, I bequeath to you the search for that which has been lost. As for me, I will return to the valley of my birth and I will eat my tears from sunrise to sunrise.

It is impossible to forget such stories. But we must be conscious of the realities in which we operate, just as Tawhiao was, for even in his despair, he planned for the return of his people. He said to Te Whiti and Tohu:

Maku ano e hanga i toku whare. Ko tona tahuu he hinau, ko ona pou he mahoe, he patate. Me whakatupu ki te hua o te rengarenga, me whakapakari ki te hua o te kawariki.

*I will build my own house. Its ridgepole and support posts will be of humble soft-woods. Those who live within it will be raised on the thin gruel of the rengarenga and strengthened on the sour fruit of the kawariki.*²

Using the architecture of the traditional carved meeting-house as his metaphor, his message to the prophets of Parihaka was that his first task was to be the shelter in which his people could survive and heal themselves. He was a tough realist and he knew the years to come would be hard. We do ourselves no favours if we fail to adopt the same approach today.

THE PRICE

How then is the price of legitimacy to be fixed? Within the parameters of the status quo, there will be a great deal of haggling over that question. Price parameters will be set in the design of the transitional justice system itself and individual prices will be arrived at case by case within it. Many factors will come into play. I set out some of these below:

1. The reality of majority rule and the level of nervousness the (majority) electorate feels about the ramifications for their own primacy of recognising Indigenous rights. Most politicians when negotiating settlements will say that they cannot go any higher without alienating the electorate. Whether that is true or not in any particular case bears careful analysis.
2. Demographics and the relative size and importance of the Indigenous minority. In theory, the larger the Indigenous minority, the greater the leverage. This has to some extent been the case for Maori who make up 15% of the population but a much larger proportion of the young. To be effective, however, there must be some level of organisation and cohesion. Like all Indigenous people, this has proved a constant challenge for Maori.
3. The perceived importance among the political elite of international credibility and standing. A country that is conscious of its international status will want to be seen to be doing the right thing, particularly if it is being led by an internationalist. In his famous 1992 Redfern speech about the need to uphold the Mabo decision, Paul Keating, then Australian Prime Minister, made the point:

We simply cannot sweep injustice aside. Even if our own conscience allowed us to, I am sure, in due course, the world and the people of our region would not. There should be no mistake about this – our success in

² Here Tawhiao has cleverly embedded multiple meanings into his words in a way that the great philosophers of the Māori world were reknowned for. ‘Rengarenga’ is pounded fernroot meal, a very humble food, but it is also used to describe things that are scattered about. He thus also imports the idea that the reality for him and his people will be as a scattered remnant in the foreseeable future – literally, they will eat the fruits of their defeat. Similarly ‘Kawariki’ is a swamp plant, but according to the Williams Dictionary is also sometimes applied to children (riki means small). So it is possible that he also intended to mean that strength – whakapakari- would only come with succeeding generations.

resolving these issues will have a significant bearing on our standing in the world.

4. Timing and the importance of symbols in politics. This is often a difficult factor to plan for. But it can be a very powerful force for change. Looking at it from a distance, the recent stolen generations apology by the incoming Rudd Government appears to be such an example. It seems likely that the new administration needed a powerful symbol of a clean break from the style of the old. The apology provided such a symbol at the right time. Whether it produces a systemic increase in price across the wider field of transitional justice remains to be seen but it certainly creates a mood and expectation that needs to be lived up to.
5. Political vision and courage on all sides. This is obvious. Without it there will be no movement.
6. The ability of the Indigenous side to act consistently with the moral high ground it holds.
7. The nature of the legal or political process used to assess price case by case.
8. If price is assessed by judges, the doctrinal principles they adopt.

These influences are generally in tension amongst themselves. They produce steady incremental change at best. At worst, they sometimes produce no change at all although this state of affairs is unlikely to be allowed to last indefinitely. Without at least incremental shifts in resources and decision-making power to Indigenous peoples over time, the whole question of the moral and political legitimacy of the current legal order remains a stone in the shoe of the state.

This suggests something that Indigenous peoples often forget. The gift of legitimacy to the state is a powerful moral and political card. Just as the position of the West in the globalisation debate is undermined if its effect will be to entrench geographic disparity, so it is that nations with dispossessed Indigenous minorities remain deeply uncomfortable about the taint of an immoral past and its living consequences. The gift of legitimacy must not be given lightly.

UNINTENDED RESULTS

I think the right metaphor can be found in rugby league – although it may not be a metaphor with which you are familiar this far west of Sydney. Transitional justice is like a rugby league scrum: the side putting the ball in almost always wins it back. For the defending side, the limited objective is to do all they can to make the ball less useful to the attackers by slowing it down or making it untidy in some way. The only difference is that in transitional justice, the Crown always puts the ball in and the Indigenous group is always defending. Their objective is generally to make the Crown pay dearly for its ball.

I said the side putting in almost always wins it back. Sometimes, very rarely in the game of rugby league, the defending side unexpectedly wins the ball. Usually this is because someone on the attacking side takes his eye off it.

This can happen in transitional justice too. For example, in 2004 a full bench of the New Zealand Court of Appeal decided unanimously that it was possible in law for Maori to make claims to the foreshore and seabed in the Maori Land Court. The government announced three days later that it would introduce legislation to explicitly extinguish any remaining Maori title (without compensation) while recognising the right of Maori to claim more limited use rights. This was done on the basis of an assessment that the non-Maori electorate would not tolerate exclusion from New Zealand's beaches. That assessment was probably right, though just how many exclusive titles could have been granted by the Maori Land Court remains unknown. On the Maori side, there was great anger. A large-scale protest march was held in Wellington when the legislation was introduced. The march gained unprecedented national coverage. True to the Government's perception of the majority will, the Foreshore and Seabed Act 2004 was enacted but not before a Maori member of Cabinet resigned her ministry, her seat and her party membership and set about forming a new Maori party. She was re-elected in a by-election and in the next General Election, the Maori Party took 4 of the 7 Maori constituency seats.

In a sense the Indigenous community lost the foreshore and seabed battle but in doing so fundamentally changed the New Zealand political landscape. As a result, there is now genuine competition for the growing Maori vote. This has changed the game. Instead of Maori issues being on the political agenda because they are risks that must be mitigated, there is now competition for policies that are pro-Maori. Had it not been for the foreshore and seabed earthquake driving Maori to a collective expression of indignation, this change could well have taken much longer to manifest itself.

BEYOND TRANSITIONAL JUSTICE

Though transitional justice is seen both in Australia and New Zealand as an iconic component of general Indigenous policy, it cannot be the whole picture for Indigenous people. First of all, as I have said, its drivers are not exclusively Indigenous. It is as much focussed on the legitimacy of the state as it is on outcomes for Indigenous people. There is also the problem of the adversarial format preferred in both countries. In an incisive critique of the native title process in Australia, Hal Wootten wrote:

To leave the consequences of these policies to litigation in private actions based on existing rights, in courts designed to settle legal rights by an adversary system within a relatively homogeneous community, is at once an insult to the Indigenous people and a prostitution of the courts.

He is essentially right. In Australia the surviving title approach to transitional justice requires the Indigenous community to prove in a court or tribunal that colonisation caused them no material injury. This is necessary because, the greater the injury, the smaller the surviving bundle of rights. Communities who were forced off their land lose it. Those whose traditions and languages were beaten out of them at state

sponsored mission schools lose all of the resources owned within the matrix of that language and those traditions. This is a perverse result. In reality, of course, colonisation was the greatest calamity in the history of these people on this land. Surviving title asks aboriginal people to pretend that it was not. In New Zealand, the reparative approach encourages Maori communities to argue that the policies and actions of the colonial Crown were responsible for every injury they have ever suffered. This just as unrealistically and unfairly places all of the incentives at the other end of the spectrum. It encourages claimants to paint their ancestors as victims for whom all choices were imposed by colonial authorities bent on their destruction. It patronises those Māori leaders in history who sought, sometimes rightly and sometimes wrongly, to make choices that might mitigate the worst effects of colonialism on their communities. It discourages pride in those aspects of Māori identity that have survived the trauma of colonisation. Both approaches contain the seeds of a potential future but the seeds struggle to grow because of an all-consuming focus on a traumatic, conflicted and caricatured past. Though that past is vitally important it cannot define our present or our future. If we allow it to, we will inevitably become imprisoned by it and addicted to our own oppression.

How then do we survive and gain strength in the present? How do we conceive of a future when the term “indigenous” is not automatically followed by nouns like “injustice”, “disparity”, “loss” or simply “problem”? Transitional justice alone does not give us the answers. There is nothing we can do to change the last two and a half centuries. Our first task as Indigenous peoples is to bear witness to its cruel legacy. But beyond remembering, the true work of this generation, here and now, is to transcend it. If we do not, we doom the next generation to a kind of ground-hog day of dispossession. What are we to do about the next two and a half centuries is where we must ultimately focus. In fact what about the next two and a half decades!

And the transcendence must begin on the Indigenous side. Why? Perhaps it is because the settler cultures lack the ability to make the necessary leap of faith or imagination. Perhaps, ironically, the trauma of colonisation expands the mind and makes imagining easier for the peoples who suffered it. Perhaps it is just that the greatest incentives for breaking out are with Indigenous peoples rather than those with the greatest investment in the status quo. I don't know to be honest. I just know that Indigenous people must take the lead and the settlers must be convinced to follow. The key to unlocking this thing is not with settlers, governments or the state. It is with us. And, of course, there is no way to guarantee success. But failure is inevitable if we do not begin to imagine, and in imagining, take ownership of a future that is different from our past.

I want to suggest four overlapping ideas that must be applied in the here and now to take us beyond transitional justice – indeed to discipline us into using transitional justice as a bridge into the future rather than as an end in its own right. Those ideas are: vision, identity, practical commitment and interdependence. Let me explain:

We must build a vision of our destiny – because without vision our future path will be that of the wanderer. It may well be a different vision for different peoples or communities, but it is this vision which provides us with our road map. Vision is the great challenge of leadership, and it will be for Indigenous leaders to build the vision and convince the people to travel with them. Our vision must not be just that our land

claims will be settled fairly. It is not to be found in transitional justice. It is to be found beyond transitional justice.

The vision must be grounded in our identity for it to have any meaning at all for our people. It must capture our highest ideals and greatest imaginings. It must not be just about removing disadvantage. On the contrary, it must accentuate our advantages. It must celebrate our separateness and our uniqueness. It must begin with the positive things that we bring to the great story of humanity. Thus our vision will be about protecting our unique relationships with the land, rivers, mountains and seas. It will be about the survival and growth of our languages and cultures, our strong sense of togetherness and community. It will be about the quiet wisdom of our elders and the sacredness of our traditional knowledge. It will be about how we intend to carry these forward as markers for the generations to come. How, far from being anachronisms, these markers will help those in the future to make greater sense of the world and their place in it than we have been able to. There will of course be more to it than that. For example, we will need to grapple with how we participate in modernity when building our vision. And we will need to heal our disadvantage in comparison to the wellbeing of the wider population. Different communities will seek different paths. But all must start with identity. That is how we choose to measure our performance against ourselves rather than against the settlers. That is how we avoid making their reality our vision.

This vision must then be backed up by practical commitments at individual and community level. This obvious element is as essential to transcending the past as is vision. It is the means by which we take personal and collective ownership of our future. It is, in some small way, the means by which we dispossess the bureaucrats and politicians of their mortgage on our futures. I practiced for many years as a lawyer working for Māori communities in their land claims. It was important and challenging work at the interface between Māori and the government. It was a privilege to be given the opportunity to do it. But over the years I came to understand that although that work was important, it was not as important as my decision to accept personal responsibility for the survival of my language in my own home. Walk the talk as best you can in your own circumstances. This is important because it is the practical means by which we stop the government or the courts owning more of our future than we do.

And finally we must recognise in our vision that our future is not as some sort of isolated idealised island. That while we must take responsibility for the future we wish to imagine, we cannot achieve that vision alone. Our world is far too complicated now. It is globalised, virtual and fragmented. Our people live within our traditional communities and outside them. They have intermarried with the settlers and raised families. They work within the bureaucracies that we complain about. In other words we must recognise that we have become interdependent peoples and it is through our interdependence that we will ultimately transcend our past. We have interdependent relationships with bureaucracies, politicians and with settler communities for a start. These exist at local, state and (in Australia) federal levels. When you think about it, interdependence is a strength, not a weakness. It means that it is possible to call on capacity and ideas outside ourselves to help achieve visions we have grown from within. In theory, collaboration should produce a better and stronger result than isolation, even if it requires negotiation. I am aware that the past

has not produced many successful models of collaboration but that does not mean that it is impossible. Remember that interdependence is a two way street. It is true that we need them. But they also need us. They need the gift of moral legitimacy. They need to stop spending money on our dependence. They need the comfort of positive and healthy relationships with us. These are powerful incentives in anyone's book.

Earlier on, when talking about the "yes but" principle, I mentioned the possibility of a new game. The possibility that, rather than simply locking in the status quo, transitional justice could lead to the evolution of a new status quo. The concept of interdependence makes that possible. When partnerships are developed, both sides are changed. It is possible – indeed, I think likely – that over time Indigenous ways of doing will come to change "the system" itself, but that will be for the future. I am aware of examples of this in New Zealand. There are cases where the creation of formal relationships between Department of Conservation (DoC) regional offices and local tribes has changed the culture – and even the language – inside DoC. I know that formal relationships with Indigenous communities at central and local government have led to the realisation that the adoption of Māori ceremonial norms lend weight and solemnity to important occasions in a way that settler cultures cannot. My sense is that through the incremental creation of strategic relationships with Indigenous leaders, organisations and communities; bureaucracies, political institutions and non-indigenous communities are indeed being counter-colonised and transformed. The process is achingly slow, but it is a beginning.

ENDING ON A POSITIVE

The amazing thing is that even as I write this I realise that all over Australia and New Zealand Indigenous communities are already creating visions, strengthening identity, making practical commitments to the growth of culture and language and building partnerships of interdependence with the wider community. After all, this is hardly rocket science. If there is an element missing, it might only be the realisation that it is in doing these things we will transcend the cruel legacy of our past. It would be great if these efforts were better coordinated and if those engaged in them saw, as I do, that theirs is the great work of this generation. But it may be in real life things are just not that tidy. It may be that we will not understand the miracles they have created until long after these heroes have passed into memory.

E tau ana.

ISSN 1326-0316

ISBN 978-0-85575-479-2

Native Title Research Unit
Australian Institute of Aboriginal and Torres Strait Islander Studies
GPO Box 553
Canberra ACT 2601
Telephone: 02 6246 1161
Facsimile: 02 6249 7714
Email: ntru@aiatsis.gov.au
Website: www.aiatsis.gov.au

Views expressed in this series are not necessarily those of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

