Testimonies: The Cultural Politics of Interpretations' in Auckland on 3 – 4 December 2004. More information is available from www.arts.auckland.ac.nz/ant/ASAAConference.

Sea Country Talk

The Native Title Studies Centre at James Cook University is hosting a presentation by Professor Helene Marsh on Sea Country Management: The Challenge of Reconciling Legal, Cultural and Ecological Scales on Fri 19 November from 2pm-4pm. All are welcome to attend this free public seminar, visitors from outside JCU are welcome to RSVP by emailing Katie.Kiss@jcu.edu.au or by phoning 4042 1198.

FEATURES

From the Fringes to Economic Advancement

By Brian Wyatt - Churchill Fellow 2004, Executive Director, Goldfields Land and Sea Council

A constant companion during my recent Churchill Fellowship study tour of South Africa, Canada and the USA was the memory of mad-cap professor Julius Sumner Miller. For those of you too young to remember, Miller enthralled us all in the seventies with a down-to-earth science program on television. He would confront us with issues as complex as the Theory of Relativity, before explaining them with experiments that we could all perform at the kitchen sink.

As I travelled, my Theory of Relativity was the difference I perceived in progress toward economic independence between Indigenous Australians and our brethren in North America and South Africa. As I inspected the Maricopa Pima Tribe's multi-million dollar casino in Arizona, and the big game hunting tourist development in Pilanesburg National Park, whose profits are shared by the surrounding tribal communities, I could hear the good professor asking: "Why is it so?"

By the time I returned to Australia I had the answer: Indigenous people in North America and South Africa have a secure political framework within which they are working to haul themselves from the fringes of society into the economic mainstream. They enjoy widespread community acceptance of the need for this to happen and the political system is geared to making it happen, quickly!

North America

In North America, there are numerous examples of Indigenous people and communities owning and controlling huge, sustainable businesses (casinos, agriculture, forestry, tourism etc), enterprises whose profits are being used to liberate them from the cycle of welfare dependence. Putting it another way: they have their own 'cash cows', while Aboriginal Australians do not. Our cash cow is still government and there is no change on the horizon.

Not only are Indigenous communities in North America well advanced toward participating in mainstream economic life, thereby stopping the rot of their cultural identity, but they also enjoy considerable power for deciding social priorities for their people.

Their economic clout has delivered effective political and social alliances with powerful non-Indigenous groups and individuals, including academia. For example, partnerships have been forged with the likes of Harvard University, through judicious sponsoring of Indigenous studies in the university's curriculum.

So what is this 'political framework' that has put Native North Americans into such a desirable position? At its heart is the treaties that were struck a long time ago between them and their respective governments. Specifically, the treaties have:

- Put to bed arguments over prior ownership and dispossession, allowing all parties to focus instead on the task of integrating In-

digenous people in participating in mainstream economic life. There is almost universal acceptance of the fact that Indigenous people were disadvantaged by dispossession and erosion of their rights;

- Provided authority and a legal framework for government to move on from debate about whether or not they should support Indigenous social and economic development, to the point where they now concentrate on implementing programs for actually achieving it; and

- Provided a platform of legality and legitimacy for the aspirations of Indigenous people, including their land aspirations. From the treaties flowed confidence and self esteem for individuals and communities, as well as strong political, social and economic alliances that have hastened progress toward free-standing Indigenous communities.

South Africa

In post-apartheid South Africa, while the process has been different to that of North America, the broad outcomes are the same – there is universal acceptance that change is required. And a secure political framework has been created that is ensuring the change is a positive experience, not just for Indigenous people but for all South Africans, including white people.

Through its Land Restitution Program the new government has clearly outlined to the country's agriculture industry, which consists predominantly of white farmers, that 33% of prime agricultural land will be returned to black people within ten years.

Indigenous South Africans are receiving freehold or 'real' title for land, which is attractive and tradeable for commercial investment and other economic development activities. It has allowed many individuals and communities to become involved in major investment and partnership opportunities and wealth sharing projects such as game parks, farming, ecotourism, mining and housing programs. These are the future 'cash cows' of black South Africans.

Interestingly, the hand back of traditional lands is happening with minimum rancour or dissent from the white land owners. The non-black farming industry group AgriSA, for example, publicly supports the process. It does this to protect their own remaining lands, while at the same time ensuring fair and equitable compensation is available where land is resumed.

Another reason for their support is that land claims and freehold title are only granted where economic benefit to the nation is clearly evident. This caveat reflects the urgency in South Africa for ensuring black people contribute to the national economy. New black land owners are left in no doubt by their black, post-apartheid government that they will be made accountable for any post-transfer deterioration in farm production.

Impressed as I was with the benefits of the treaties of North America, I am not optimistic that a federal government in Australia will be putting a treaty on the table in my lifetime. But that shouldn't stop us from moving in the same broad direction at the State level.

Accordingly, I have proposed that our State governments set about leapfrogging their jurisdictions to the North American post-treaty position, where the mindset of the public service, industry and wider community is more focussed on the future than the past. The main thrust of my proposal is:

- Removal from the hands of the State public service the role of formulating policy affecting Indigenous people. This responsibility should be in the joint hands of the Executive arm of government (Cabinet and Ministers) and Aboriginal people.

  Let Aboriginal people and the Executive get together to decide what policies, facilities and services Aboriginal people/communities require, after which the

public service's role would be to implement the decisions.

Currently, it is often the case that the public service decides the shape of facilities and services, and then has these decisions/policies rubber stamped by the Executive. The result is not just a failure of services to match community needs, but tension and animosity between Aboriginal people, public service and the Executive. We need a less adversarial system and one that is more responsive to the wishes of Aboriginal people and thus less wasteful.

All opportunities for providing meaningful land tenure for Indigenous communities must also be pursued, in order to hasten economic independence. Aboriginal land held in trust by governments must be handed back, with the capacity for occupiers or traditional owners of these lands to enter into joint venture business arrangements (tourism, industry etc). Government must also pursue more vigorously the incorporation of Aboriginal people in public and private regional development projects (tourism ventures, mining and exploration, national parks, etc) to provide more training opportunities and skills development, jobs, royalties, financial equity, etc.

- If necessary, legislation should be enacted to spell out the mindset of government on Aboriginal issues and provide clear goals and guidelines for all stakeholders (public service, developers, Indigenous people, etc). In Western Australia a fitting title would be the 'WA Aboriginal People Economic Participation Act 2004'. The legislation would not labour past injustices but would enable society to draw the line on history, while at the same time acknowledging the need for non-combative, community-wide action.

It is urgent that we catch up with North America and South Africa and get to the point where the endless debates about the morality of past injustices are behind us. We must instead devote our collective energy to ensuring the fulsome participation of Indigenous people to access the benefits enjoyed in mainstream social and economic life. Certainly, this is what Aboriginal people want.

The Kimberley Land Council Native Title Update

By the Kimberley Land Council

For the past year, the KLC has been engaged in a range of native title litigation and comprehensive negotiations. A theme running through the litigation is the impact of technical and practical matters, generally out of the KLC's control, on substantive issues. The negotiations have consistently sought to use native title rights to forge outcomes from Government and the private sector which deal both with past injustices and establish building blocks for a future where Traditional Owners have a meaningful economic, social and political stake in their country.

Litigation

Wanjina Wungurr Wilinggin

Sundberg J handed down his decision in *Neowarra & Ors v The State of Western Australia & Ors* on 8 December 2003. Final orders were made on 27 August 2004. Whilst the judgment was largely favourable, the KLC would have hoped for a different outcome in relation to certain aspects. In particular, the KLC considered that his Honour erred in restricting the right to hunt and gather on pastoral leases to areas that are unenclosed and/or unimproved on the ground that this was not consistent with the High Court's reasoning in *Ben Ward & Ors.*

In December 2003, the judge handed down a draft determination reflecting his decision and sought submissions. The KLC submitted that as final orders had not been made, the judge had the power to re-look at the unenclosed/unimproved issue, but this was wholly rejected by Sundberg J.

When instructions were taken on whether to lodge an appeal, the Wanjina claimants were very clear that, notwithstanding the limitations of the judgment, they did not want to appeal. The claimants considered that they had been