Editorial

Since its inception *The Newcastle Law Review* has consistently published contributions on a wide range of topics. This first "themed" issue is a new departure. The *Treaties and Constitutions* issue of *The Newcastle Law Review* is organized broadly around discussions about the recognition of Indigenous peoples' rights and cultures in the state constitutions and legal regimes which have developed in some former British colonies, especially Australia, New Zealand, and Fiji. Three of the papers were presented at a symposium held in October 2000 under the auspices of the University of Newcastle's *Laws, Societies and Cultures Research Group*. The trigger for that meeting was the Fijian coup of May 2000 and the abrogation of the 1997 constitution. It seemed to the organizers that the disturbances in Fiji and especially the violent attack on its multi-racial constitutional regime provided an opportunity to discuss the vexed issue of adapting modern constitutional structures to societies which are a mixture of Indigenous inhabitants and settlers. Indeed, while Indigenous Fijians were trashing a constitution which had been explicitly constructed to reconcile their rights with those of the Indo-Fijian community, we were aware that in New Zealand the 1840 Treaty of Waitangi had ultimately inspired significant progress towards legal recognition of Maori rights. The Waitangi Tribunal appeared to be functioning as a viable institution of government for the ongoing mediation of their aspirations.

These contrasts are surely of immediate importance in contemporary Australia, at a time when representatives of the Indigenous communities continue their campaign for a treaty or agreement which recognizes the rights of Aboriginal and Torres Strait Islander peoples and acknowledges their status as first peoples. Two questions therefore presented themselves to the organizers of the symposium. First, how far could the present

difficulties of representing Indigenous cultures be reconciled with cultural assumptions about law and governance derived from the Anglo-American historical experience? And second, was some kind of foundational statement about the terms on which the Indigenous inhabitants signalled their consent to government – whether deed of gift, treaty, or reconciliation document – an advantage or disadvantage in the construction of a multi-racial legal order? It was hoped that a symposium which brought together academic lawyers, administrators, and historians with key knowledge and experience in these three areas would make a worthwhile contribution to understanding these issues.

In addition to the papers derived from the symposium, this issue includes two lectures which address similar themes: the 2001 Sir Ninian Stephen Lecture, given by Emeritus Professor Garth Nettheim of the University of New South Wales, and the 2001 Morpeth Lecture, delivered by Professor Larissa Behrendt, Professor of Law and Indigenous Studies and Director, Jumbunna Indigenous House of Learning at the University of Technology, Sydney.

The Newcastle Law Review has published the text of the Sir Ninian Stephen lecture annually and is pleased to be able to publish the 2001 lecture "Making a Difference: Reconciling Our Difference", which highlights many of the issues raised at the 2000 symposium and presents them in a scholarly and accessible fashion. It concludes with a challenge to Australia's legal system and its lawyers in achieving reconciliation. This challenge is ably taken up by Professor Larissa Behrendt in "Body, Mind and Spirit: Pathways forward for Reconciliation". Whilst the Morpeth Lecture has an august history, this is the inaugural publication by *The Newcastle Law Review*, and grateful thanks are owed to Professor Behrendt, the University of Newcastle and the Anglican Diocese of Newcastle for permission to produce the text of the lecture. Professor Behrendt builds on the themes introduced by Professor Nettheim, exploring some of the intersections of politics and law which continue to influence the road to reconciliation.

It is a pleasure to present two student contributions in this issue, which also touch on the "Treaties and Constitutions" theme. Natasha Nalder draws on her experience in Zimbabwe in her reflection on the rule of law in that country. Matthew Fenwick has provided a case note on the significant decision in *Fiji v Prasad*, which forms a fitting postscript to the paper by Dr Brij Lal appearing earlier in the volume.

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