

2004 Clare Burton Memorial Lecture

Law Stories and Life Stories: Aboriginal women, the law and Australian society

Professor Larissa Behrendt¹

It is an honour to deliver the 2004 Clare Burton Memorial Lecture. Although I did not know her, I admired Clare Burton's work on gender and race bias and the way in which she ensured that work translated from academia into practical applications. It was that spirit of effecting real change that I hope to pay tribute to in this lecture and also to acknowledge that I represent the generation of women who had the benefit of the work that was done by women like Clare Burton to allow more opportunities within the tertiary sector and the workplace in general.

I had my first novel released in May this year.² It was a story, inspired by my own family history, which looked at the impact of the policy of removing Aboriginal children on their families over three generations. One of the recurring questions I was asked – along with the ubiquitous: “How autobiographical was it?” – was: “Which will you do now – novel writing or law?”

Apart from the fact that most writers in Australia make on average a paltry \$11 000 per year – and the lack of support for the development of Australian writers could be the topic of a whole other lecture – I kept wondering why people saw law and story-telling as two completely different paths.

I don't for two reasons. Firstly, the telling of stories – life stories – is the only way in which people can understand how laws, policies and the Constitution – words and actions of politicians and judges – impact profoundly on our lives. And without this understanding of laws impact, the necessity, passion and zeal for law reform cannot be understood.

When I was a small child, I – and my father – always knew we were Aboriginal but had no proof. My grandmother had been removed from her family and my father had been placed in a home since he was five. But when I was about 11, my father had a series of heart attacks and a near death experience. After that, he went on the search to find that identity and we discovered that we were Eualeyai and Kammilaroi. From that early age, I knew the impact of the policy of removing children on my family. I watched my father, who had seemed a distant, bad-tempered and insecure figure transform with the knowledge of identity and place. He became a loving, generous and proud man.

Knowing that history, it infuriated me that my school mates in the predominantly white school that my brother and I attended did not know anything about this policy. I thought then that if they knew about that policy and how it devastated Aboriginal

¹ Professor Larissa Behrendt is Professor of Law and Indigenous Studies and Director of the Jumbunna Indigenous House of Learning at the University of Technology, Sydney.

² Larissa Behrendt. *Home*. St. Lucia: University of Queensland Press, 2004.

families like mine that they would understand why we face the issues that we do as Indigenous people, families and communities. I thought then that if people understood the human cost of those policies that they would have a greater understanding and a greater tolerance of Indigenous issues.

This belief stayed with me as I chose a career in law. And it is true to say that again, it was the removal policy that made the law an attractive option for me. The removal policy ignited my sense of outrage about the injustice of it and I knew the power of the law and it was the spark for my interest in law reform.

The Human Rights and Equal Opportunity Commission's report, *Bringing Them Home*,³ seemed to be that moment at which the conscience of Australians would be pricked about the impact of the child removal policies. It was a report that contained many narratives from Indigenous people who had been removed and who had lost children to the policy. It contained many moving anecdotes:

“They put us in the police utes and said they were taking us to Broome. They put the mums in there as well. But when we'd gone about ten miles they stopped and threw the mothers out of the car. We jumped on our mother's backs, crying, trying not to be left behind. But the policeman pulled us off and threw us in the back of the car. They pushed the mother's away and drove off while our mothers were chasing the car, running and crying after us. We were screaming in the back of that car.”⁴

But the response from the Howard government to the *Bringing Them Home* report was to destroy my belief that engaging with those narratives would lead to education and a deeper understanding. The official response was one that attempted to minimise and trivialise the impact of the policy stating that it was only one in ten children who were removed from their families; many were taken away for their own good and that it was wrong to use the word 'genocide' in relation to this practice. What this response showed is that the telling of stories isn't always the key to deeper understanding, it can be the trigger for defensiveness and an attempt to silence.

That's when writing *Home* became so important to me. I wanted to make sure that people couldn't silence those voices. While my novel is a fictional account of the impact of the removal policy, it remains faithful to the experiences of my family. It attempts to show that there were more than just one in ten people who were affected by the policy – that statistic ignores the impact on parents, grandparents, aunts and uncles, brothers and sisters. And it also attempts to show that, whether you want to call it cultural genocide or not, this policy still affects Aboriginal families today; that it is a legacy that is with us even now.

People cannot understand the need for law reform if they do not understand how laws and policies affect peoples lives, how laws move from the brinkmanship of politicians

³ Human Rights and Equal Opportunity Commission (HREOC). *Bringing Them Home: A Guide to the Findings and Recommendations of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from the Families*. Sydney: Human Rights and Equal Opportunities Commission, 1997.

⁴ HREOC. At p.7.

to the circumstances in which a mother with four dependants can access welfare benefits, how policies move from political stunts to locking children up in detention centres and how silences in the Constitution mean that black parents do not have the right to bring up their own children. These moves from rhetoric and words on paper into the way in which people are forced to live their lives are essential in understanding the link between law and its impact.

The second reason that I was surprised about the easy ability to disassociate law from narrative is that the Western legal tradition is adept at storytelling. For example, if we look at the justification of the assertion of British sovereignty over Australia, we can see this myth making in action. The *Mabo case*⁵ overturned the doctrine of *terra nullius* – a legal fiction that held that Australia was vacant or without a system of governance and law. We could see clearly that Australia was not a vacant country and can dismiss as the most offensive kinds of racism the assertion that Indigenous people do not have a culture sophisticated enough to have a system of laws or a structure of governance. What is often missed within the text of the *Mabo* case that rightly overturned the doctrine of *terra nullius* is that it replaced that legal fiction with another. The case now plants within Australian law the narrative that the acquisition of sovereignty by the British was one based on “settlement”. For Aboriginal people this becomes just another myth making exercise about Australia and its claim to legitimate sovereignty. The assertion that this is a “settled” – as opposed to a “conquered” – country in the face of the resistance, frontier violence and lack of consent is as open to contention as the notion of *terra nullius* was.

Of course, when law seeks an outcome, it is not to find “truth” the way that we would see “truth” in other disciplines: the adversarial process that sees two parties put forward their best evidence – and only that evidence which the court finds acceptable – and decides on either the balance of probabilities or beyond a reasonable doubt as to which competing versions to accept in its findings. This is very different to a process of scientific experimentation or a process of historical inquiry or the process of medical research.

Legal “truth” and the “truth” of other disciplines are as alike as apples and oranges and it is not easy to translate one to the other. But legal truth impacts on lives in profound ways: access to children, rights to property, guilt or innocence, the ability to seek refuge in Australia, the rights to speak and vote, the ability to be a legal entity or not.

There are other ways to investigate the connection between law and storytelling and one of the most important is to critique the ways in which negative stereotypes in popular culture and broader society find themselves captured within laws and policies. The ways in which stories in popular culture portray Aboriginal women – the stereotypes that are generated about us – can find their way into legal analysis in a way that sees those stereotypes reinforced and our rights unprotected. It is not just overtly racist literature that provides these examples; they can be just as prevalent in accounts that purport to be sympathetic to Indigenous women.

⁵ *Mabo et al v Queensland* [No.2] (1992) 175 CLR 1

One example is Katherine Susannah Prichard's novel, *Coonardoo*.⁶ When I was in High School in the 1980s, one of the names I was called was "Coonardoo". It was the title of a book taught to some of the English classes (not mine) and I never worried too much about the label because, as a black woman, there are worse names that you can be called. It was only when I went to study at Harvard and took to borrowing Australian novels from the undergraduate library to lessen my homesickness that I finally picked up a copy of this namesake book. I was horrified when I realized the implications of being called "Coonardoo," of the images and messages that were being placed upon me with the name.

Coonardoo, is a portrayal of the relationship between Coonardoo, an Aboriginal woman who resides on the pastoral property that is on her traditional land, and Hugh (Hughie) Watt, son and heir of the pastoral lessee. First published in 1928 in *The Bulletin*, *Coonardoo* scandalised readers with its portrayal of a so-called 'love relationship' between a white and an Aboriginal.⁷

Hugh and Coonardoo are childhood playmates. As they grow, Hugh goes away to school and Coonardoo works in the house of the station and out on the property with the men. When Hugh is older, he returns to Wyaliba, groomed for his role in taking over from his mother. When Mrs. Bessie passes away, a grief-stricken Hugh turns to Coonardoo for solace. After this sexual encounter with Coonardoo, Hugh becomes sick and leaves the station, returning with Mollie, his white wife. Coonardoo, in Hugh's absence, has given birth to Winni, her son to Hugh.

Coonardoo continues to work as housekeeper at Wyaliba, through the birth of Hugh and Mollie's children, the eventual breakdown of Hugh's marriage and Mollie's departure to Geraldton. When Coonardoo's husband dies, Hugh decides to take Coonardoo as his "wife" to prevent Sam Geary, an adjacent landowner who openly lives with his "gins", from acquiring her. Even though he takes Coonardoo as "his woman", Hugh does not resume a sexual relationship with her.

One night, when Hugh is away from the house, Sam Geary arrives and "seduces" Coonardoo. When Hugh discovers the encounter, Coonardoo is banished from Wyaliba. When she finally returns to die, Wyaliba is deserted, Hugh has lost the property to the banks and her own people have moved elsewhere.

Prichard's own 'liberal' attitudes embraced what would have been considered contemporary thinking at the time she wrote the novel and she endorses Mrs. Bessie's approach, consistent with her assumption that Aboriginal people could be 'spoken for' by whites.⁸ Through *Coonardoo*, Prichard asserts that white landowners like the Watts have a duty to care for their Aborigines and treat them well, a duty that leads to their destruction and dispossession when they abandon it.

⁶ Katherine Susannah Prichard. *Coonardoo*. New York: W.W. Norton & Co Inc, Publishers, 1930.

⁷ Yoni Ryan. *Coonardoo by Katherine Susannah Prichard*. Melbourne: Department of Discussion Programs, Council of Adult Education, 1986. At p.1

⁸ Delys Bird (ed). *Katharine Susannah Prichard: Stories, Journalism and Essay*. St. Lucia: University of Queensland Press, 2000. At p.xxi

But it is the scene between Coonardoo and Sam Geary that I would like to signal out in this example. On a night when Hugh is away, his nemesis, Sam Geary, who has long desired Coonardoo, arrives. Coonardoo is wary of Geary, who she has always despised.

Despite her lifetime of disgust for Geary, Coonardoo is weakened, “half dead in her sterility.” Geary and his friend argue over who will have Coonardoo and she listens as another Aboriginal woman, Bardi, is “seduced”:

““No.” Geary’s voice, thick and insistent, soared and foundered. “Coonardoo’s mine. You can have Bardi.”

...

They had got Bardi. Coonardoo heard her struggling, crying out, giggling and exclaiming.”⁹

(Bardi’s “no” apparently means “yes.”)

“Heavy and drunken, in the doorway, his eyes glazed, Geary stood swaying, an old man with his hair on end, his face red, swollen and ugly. Coonardoo could have moved past and away from him in the darkness. But she did not move. As weak and fascinated as a bird before a snake she swayed there for Geary whom she had loathed and feared beyond any human being. Yet male to her female, she could not resist him. Her need of him was as great as the dry earth for rain.”¹⁰

So Coonardoo, “weak and fascinated”, is “seduced” by Geary, whose drunken assertion and assumption of proprietorship were established before Coonardoo had even consented.

When Hugh discovers that “Geary ... took Coonardoo, that night he came to Wyaliba...”¹¹ he becomes violent towards Coonardoo, cruelly burning her in the campfire when she tries to cling to him. He then banishes her from Wyaliba, the place of her birth, family and home. No questions are asked about Coonardoo’s consent to the encounter despite Coonardoo’s lifelong animosity towards Geary and his many sly attempts, including an attempted abduction, to secure her for himself. Hugh is criticized not for his assumption of consent, but for his overreaction to Coonardoo’s apparent transgression.

“While it was understood a black should treat a gin who behaved badly like that, they could not understand Hugh doing the same sort of thing.”¹²

Despite claims that the book was ahead of its time because of its portrayal of the relationship between an Aboriginal woman and a white man, the book is trapped within a self-reflective moment when European Australians began to realise the enormity of the destruction they had brought upon Aboriginal communities,

⁹ *Coonardoo*. At p.202

¹⁰ *Coonardoo*. At p.203.

¹¹ *Coonardoo*. At p.209

¹² *Coonardoo*. At p.210

livelihood and lives. This is a story about white sorrow, not black empowerment. The book leaves out any possibility that Coonardoo and her community could benefit from the assertion of their own authority or autonomy. And it fails to contextualise for the reader the impact of colonisation on the ability or lack thereof of Aboriginal women to say “yes” and “no”. It reinforces the view that only debased men engage in sexual contact with Aboriginal women.

Violence, and especially sexual violence have been, for Indigenous women, a legacy of colonisation.

An Australian Institute of Criminology study shows that Indigenous women are still significantly over-represented in Australian homicide victim statistics.¹³

Work by Michael Mackay and Sonia Smallacombe also supports the view that Indigenous women are disproportionately victims of sexual and physical violence.¹⁴ In their Victorian study, 46.9 percent of reported Aboriginal victims were victims of ‘crime against the person,’ compared with only 11.4 percent of female non-Aboriginal victims. In contrast, only 34.4 percent of female Aboriginal victims were victims of ‘crime against property’, compared to 77.7 percent of non-Aboriginal female victims.¹⁵

Judy Atkinson has argued that colonised men take on the behaviours and attitudes of their male colonisers, and in so doing, act in collusion to further oppress colonised women. In this way, Aboriginal and non-Aboriginal men work together to establish the structures of patriarchy within the newly colonised societies.¹⁶

*The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report*¹⁷, chaired by Boni Robertson, in its thorough consideration of the causes of violence in Indigenous communities also provides important personal accounts of violent behaviour that shows the lives behind the statistics:

“One girl told a teacher at school that her father was abusing her and the father had said the girl was lying, so nothing further happened and she had to go back home. Her mum couldn’t protect her because she was beaten up by the father so the girl ran away and now lives on the streets. The girl is using drugs and selling sex. She is fourteen years old and has been living like this for two years.”¹⁸

¹³ Jenny Mouzos, “New Statistics Highlight High Homicide Rate for Indigenous Women.” *Indigenous Law Bulletin*, 1999 Vol. 4, No. 25. At p.16.

¹⁴ Michael Mackay and Sonia Smallacombe. “Aboriginal Women as Offenders and Victims: the Case of Victoria”. *Indigenous Law Bulletin*. 1986 Vol.3, No.80, At pp.17-23

¹⁵ Ibid.

¹⁶ Judy Atkinson. “We Al-li. Womens Forum. Making a Difference”, *Queensland Youth Affairs Conference Report*, 1994. At p.26.

¹⁷ Aboriginal and Torres Strait Islander Women’s Task Force on Violence. *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report*. Queensland: Department of Aboriginal and Torres Strait Islander Policy and Development (DATSIPD), 1999.

¹⁸ Ibid. At p.39.

“I’d have my clothes ripped off me. He’d be kicking and bashing me. I’d go screaming out of the house ... He threw me down the stairs, over the balcony onto the hard concrete. It’s a wonder he didn’t kill me.”¹⁹

The Aboriginal and Torres Strait Islander Women’s Task Force on Violence observed that the level of violence in Indigenous communities is “much higher than openly acknowledged or reported,”²⁰ and estimated that 88% of sexual assaults go unreported.²¹

If a complaint is made to the police and treated seriously enough to make its way to court, Indigenous women may still have to encounter racially biased attitudes. White male judges have, on occasion, been quick to accept claims of devalued Aboriginal women’s sexuality that has lowered the standards applied when determining whether consent had been given by Aboriginal women to sexual encounters. Bolger notes in her report the observation of Aboriginal women who claim:

“There are now three kinds of violence in Aboriginal society – alcoholic violence, traditional violence, and bullshit traditional violence.”²²

Bolger explains that “bullshit traditional violence” describes assaults on Aboriginal women, often by drunken men, which are then asserted by the perpetrators to be justified by reference to some traditional right.²³ She adds that Aboriginal men have used both traditional and new laws to their advantage with the sad consequence that many young Aboriginal women now believe that it *is* traditional for men to beat their wives and it is older Aboriginal women who have rejected this distortion as a myth.²⁴ Bolger notes the court’s propensity to use and be influenced by male witnesses – DAA officers, Community Advisers, Land Council officials, priests and community elders – who have interpretations of matters which coincide with those of the (male) offender. It is unusual for the female viewpoint or perspective to be put before the court.²⁵ Bolger observes that even when Aboriginal women’s evidence is presented it is often given less weight men’s.²⁶ Judy Atkinson has made similar observations. In *R v. Burt Lane, Ronald Hunt and Reggie Smith*,²⁷ the defendants were accused of sexual assault. The defense obtained evidence from non-Aboriginal males to show that rape was not a very serious crime in Aboriginal society and that, by approaching the men and asking for a cigarette, an Aboriginal woman may have been seen as inviting a sexual relationship. The dissenting evidence of a female anthropologist was presented to the court to show that an assault on a woman’s sexual character was treated seriously and that, traditionally, women punished men severely for it. Despite this evidence, the judge found the following:

¹⁹ Ibid. At p.87.

²⁰ Ibid. At p.91.

²¹ Ibid. At p.98

²² Bolger. At p.50.

²³ Ibid. At p.50.

²⁴ Ibid. At p.51.

²⁵ Ibid. At p.81.

²⁶ Ibid. At p.81.

²⁷ Unreported, *Supreme Court of the Northern Territory*, 1980.

There is evidence before me, which I accept, that rape is not considered as seriously in Aboriginal communities as it is in the white community ... and indeed the chastity of women is not as importantly regarded as in white communities.²⁸

In *R v Mingkilli, Martin and Mintuma*,²⁹ Police Aides and a police warden, while drunk on duty, sexually assaulted a woman they held in custody. Sergeant Berry, giving evidence on their behalf said there was no crime of rape known to the offenders' community. Justice Milhouse, persuaded by this evidence, concluded:

“Forcing women to have sexual intercourse is not socially acceptable, but it is not regarded with the seriousness that it is by the white people.”³⁰

I read these cases and I cannot help but remember Coonardoo.

Colonial notions that Aboriginal women are 'easy sexual sport' have also contributed to the perception that incidents of sexual assault are the fault of Aboriginal women. While behaviour and treatment of Aboriginal men is often contextualized within the process of colonization, no context is provided for the colonial attitudes that have seen the sexuality of Aboriginal women demeaned, devalued and degraded. The result of these messages given to Aboriginal women by their contact with the criminal justice system would only reinforce any sense of worthlessness and lack of respect that sexual assault and abuse have scarred them with.

But it is not just as victims that we can see Aboriginal women living with this legacy. *Speak Out Speak Strong* was a report commissioned by the Aboriginal Justice Advisory Committee.³¹ It interviewed Indigenous women offenders in the NSW prison system. At the time of the study, 31% of all women in prison are Indigenous, they are predominantly young (average age 25), have low levels of education and high levels of unemployment. 60% of the survey had been convicted of a serious offence and 36% had their first convictions between the ages of 11 and 12. 98% of the offenders had prior convictions as adults; 26% had between 15 to 30 previous convictions and 75% had been incarcerated previously. Most were single mothers with between two to four children of which they had the primary care. They were often also responsible for other, non-biological children and for older relatives. 68% of the women surveyed were on drugs at the time of the offence, 14 % were under the influence of alcohol. One third of them said they were heroin users. 70% of the women had been sexually abused as children, 78% had been victims of violence as adults and 44% had been sexually assaulted as adults.

²⁸ Ibid. At pp. 99-100. Cited in Bolger. At pp. 81-82.

²⁹ Unreported. *Supreme Court of the Northern Territory*, 1991

³⁰ Judy Atkinson. Book Review: *Aboriginal Women and Violence* by Audrey Bolger. *Aboriginal Law Bulletin*. 1992, Vol. 2. No. 54.

³¹ Roena Laurie. *Speak Out Speak Strong Strong: Researching the Needs of Aboriginal Women in Custody*. Aboriginal Justice Advisory Council. <http://www.lawlink.nsw.gov.au/ajac.nsf/pages/reports>, 26 October 2004.

This snapshot starts to reveal the connection between the indicators of cyclical poverty (low levels of education, high levels of unemployment), the use of drugs and alcohol, recidivism and cycles of abuse.

92% of respondents on the AJAC survey said they were not employed at the time they committed their offence. Only 52% of those who were unemployed said they were receiving benefits from Centrelink. 42% said that they had never received any benefits at all. This survey showed that 43% of the participants who had dependant children did not receive an income from employment or Centrelink payments. Approximately 70% of the surveyed participants said they were stay-at-home mothers. 13% said that their income was from drug dealing. According to the AJAC survey, one quarter of Aboriginal women in custody have relied on crime to support themselves and family members.

Another disturbing theme in the study was the impact of violence and sexual violence on child victims in their adult lives. The data showed that 98% of those who said they were sexually assaulted as children also had a drug problem. The study identified a clear link between child sexual abuse, drug addiction and offending behaviour.

The statistics that link sexual abuse with drug abuse also relate to low socio-economic living standards. It is for these reasons that much careful analysis should be given to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The report noted that the overrepresentation of Aboriginal people in custody was due to the fact that Indigenous people would be convicted and given custodial sentences for crimes that non-Indigenous people would not be charged with – namely, public order offences like drunken behaviour or offensive language. In these circumstances, it was recommended that alternatives to imprisonment be explored.

Nowhere in the Royal Commission report was there a recommendation that offences of a serious nature should not be given serious punishment and it is with much concern that we see a general trend to try and avoid or lessen custodial sentences for any crime where the offender is Indigenous. In matters of sexual assault, it sends the wrong message to not impose harsh sentences for offenders, especially those who prey on children. These serious offenders were not the prison population that was intended to be targeted in reducing the overrepresentation of Indigenous people. We must remain vigilant to ensure the distinction between offenders who have committed public order type offences and those who have committed crimes against the person, especially sexual assault. To fail to maintain this distinction fails to send a message that violence, especially sexual violence, must not be tolerated. It makes a mockery of the continued suffering of victims who are unable to come to terms with what has happened to them.

Eleanor Roosevelt once said:

Where, after all, do universal human rights begin? In small places, close to home – so close and small that they cannot be seen on any map of the world. Yet they *are* the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory or farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning here, they have little meaning anywhere.

Hilary Charlesworth alerted me to this quote and it is one that resonates with me on how important it is to remember the impact of laws and policies on people and to remember the effect when their basic rights are not protected.

Indigenous women are obvious examples of this failure to protect human rights but there is another example early this year that I thought reflected on how low our human rights standards have fallen in Australia. At the Australia Day ceremony in the Australian Capital Territory, the Chief Minister Jon Stanhope gave an address and in it he mentioned that he was ashamed, as an Australian, of the policy that saw the locking up of the children of illegal immigrants and refugees. As a result of these statements, his power to officiate over these ceremonies was revoked by the Federal Government. There were two questions for me about this: firstly, if the Chief Minister of the ACT cannot enforce his rights of free speech and political expression, what hope is there for a single Aboriginal mother with four children in Wilcannia? And secondly, why weren't Australians outraged about this blatant breach of Mr Stanhope's basic human rights?

This has been an era for the silencing of voices. As an Indigenous woman I feel it acutely with the dismantling of a representative national voice but this is reflected in other trends – the cutting of the budget to the Human Rights and Equal Opportunity Commission, the increase in powers to ASIO under the guise of national security and the silencing of many charitable organizations who were social commentators until the job network contracts they signed forbade public comment.

This trend in silencing on public comment comes at a time when social commentators have observed that Australian society is becoming more visibly racist, xenophobic and introverted. A large part of this fear of others, particularly refugees, Arabs and Aboriginal people, seems to be related to an “us” and “them” mentality within an increasing sector of the Australian population.

I have seen this hardened opinion in the work I undertook as a member of the ACT Bill of Rights Consultative Committee. During the community consultation processes in our inquiry as to whether there should be a Bill of Rights in the nations capital, there appeared a strong reluctance to recognise the rights of minorities. Feedback from those consultations included comments such as “if a Bill of Rights includes the protection of Indigenous people, it will not be for the benefit of all Canberrans” and “if a Bill of Rights mentions Indigenous rights and the rights of other minorities it will have no legitimacy.”

What is noticeable in this example is the meanness of spirit about the possible protections that a democratic society can offer. This mentality protectively guards the rights and benefits that are given to citizens within a community and seems to assume that if those rights are extended to the poor, the culturally distinct and the historically marginalised that they – middle-class, Anglo-Celtic, Christian – will be worse off. This world view sees the recognition and protection of the rights of the disadvantaged and culturally distinct as being in direct competition with their own position. It is this “us” and “them” mentality that psychologically separates one sector of the community from the other.

It is perhaps easy to understand the tenacity with which middle Australia clings to its position in a time of economic uncertainty and change. When middle Australia feels vulnerable about its own economic position, it is no wonder that the fear of change and the fear of the unknown is unsettling. But this explanation does not forgive the way in which the fear of uncertainty and the desire for security translate into racism and xenophobia. And it should not forgive the failure to recognise rights nor to endorse their breach.

Human rights are as much about the law as they are about the society that seeks to recognise or ignore them. The way in which rights are protected in a society says as much about the legal system as it does about the values and beliefs of the community. If we are to have a society that values fairness, equality and justice, we must move from an “us” and “them” mentality and realise that we are, as Indigenous and non-Indigenous people, bound to each other’s fate. As a colonised people, we have long understood that we are beholden to the fate of non-Indigenous Australia. But we do not as often enter into the consciousness of Australia’s dominant culture the way that we should.

Far from being the special and separate sector of the Australian community, we are its benchmark. The way to measure the effectiveness and fairness of our laws is to test them against the way in which they work for the poor, the marginalised and the culturally distinct. It is not enough that they work well for the rich, well-educated and culturally dominant. This measure of fairness and equity rejects an “us” and “them” mentality and holds that our fate and our worth as a society are measured best by how the most disadvantaged within our community fare. By valuing laws, policies and practices that work best because they achieve an equality of outcome, society begins to understand that extending the protections of a democratic society to those who are marginalised does not disadvantage another sector; it actually makes everyone better off.

Indigenous people are the best measure of the fairness of Australia’s laws and institutions. As an historically marginalised, culturally distinct and socioeconomically disadvantaged sector of the Australian community, our treatment within Australian society is its success or its condemnation. Viewing Indigenous well-being in this way moves us from the periphery of society’s consciousness to its centre. Not only does this erode the “us” and “them” mentality, it also moves to a mind-set that sees the transmission of the benefits of a democratic society to the disadvantaged as a transaction that will enrich society as a whole, a “win-win”.

This shift is a huge challenge at this time in our history. Indigenous experience currently illustrates that the recognition and protection of rights is still vulnerable to the whims of the legislature and at the moment it is a parliament that is most influenced by the ebb and flow of the tide of public opinion. But it is worth remembering at times like these something that Martin Luther King once said, “In the end, we will remember not the words of our enemies, but the silence of our friends.” In a similar vein he commented, “Our lives begin to end the day we become silent about things that matter.”

I have reflected a lot on that sentiment in the last few years and it reminds me how important the telling of our stories is. There is no more powerful way to lead a change

of hearts and minds that to show the human side of statistics, laws and policies. Of course governments wanted to discredit the *Bringing them Home* report with semantics and statistics. They know too well the transformative power of life stories that speak to the truth of experience. It is a lesson we must carry with us always.