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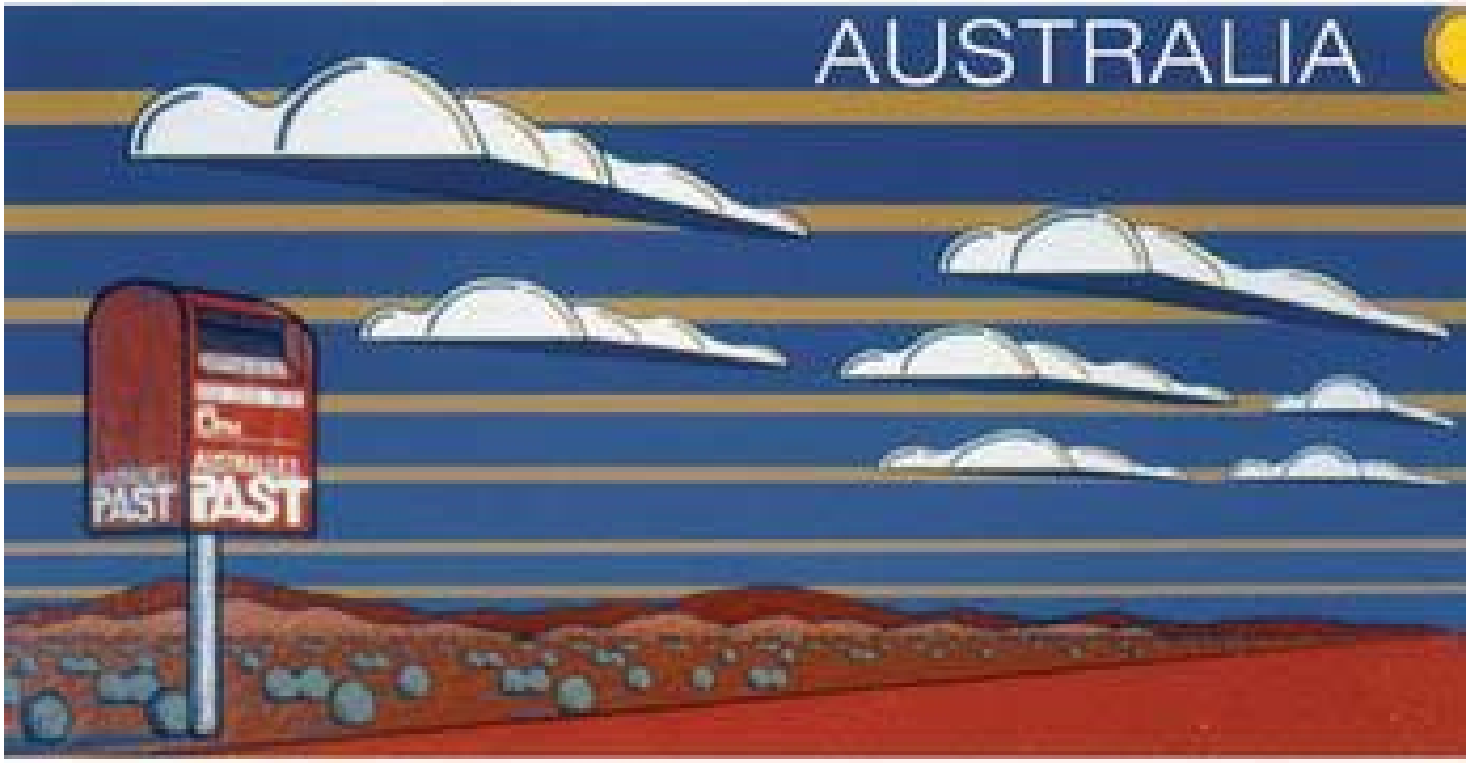

Larissa Behrendt
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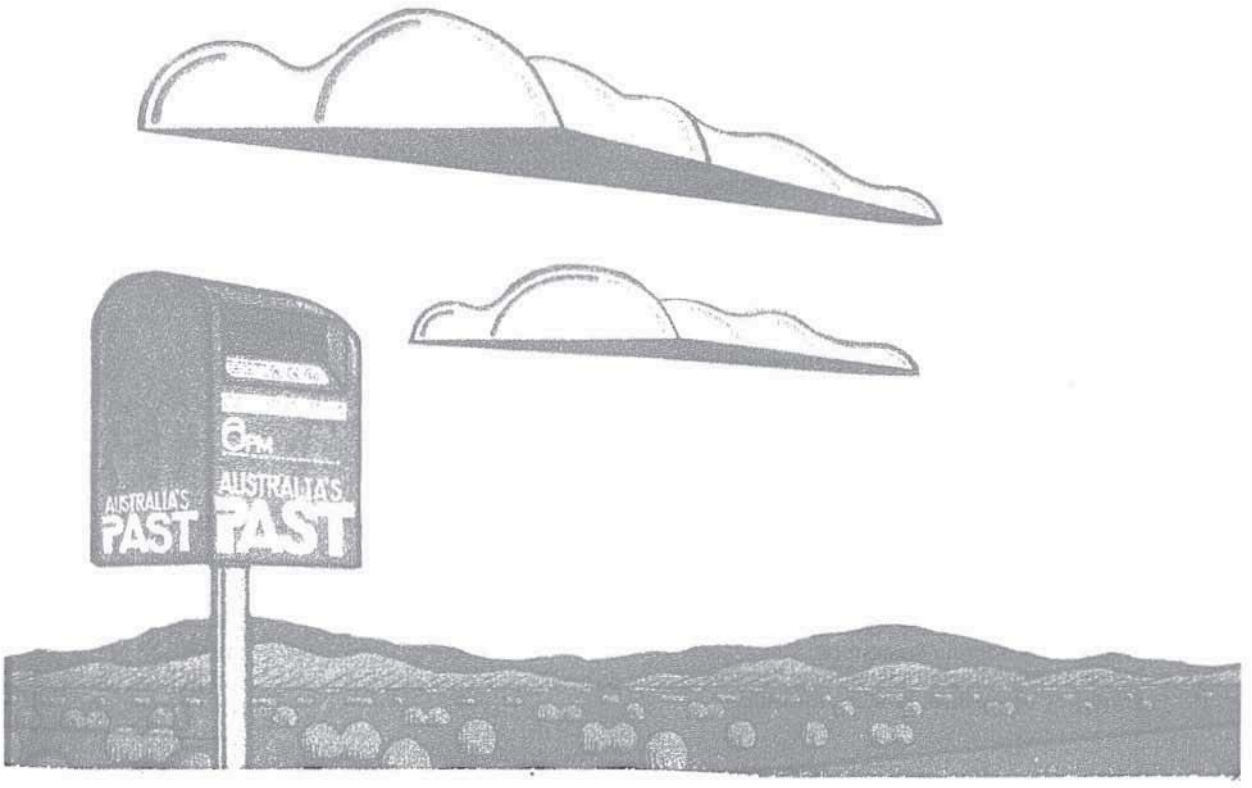

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reparations (the Bassiouni principles) for the Stolen Generations. Conventions to which Australia is already a state party such as the UN Convention on the Rights of the Child underpin the discussions on child protection and juvenile justice.

The UN Declaration on the Rights of Indigenous Peoples has a place of particular importance when discussing human rights. This is especially the case with Indigenous claims to self-determination. The right to self-determination is a principle that underpins many of the discussions in this book, from for example the role of Indigenous organisations in deciding the future of Indigenous children through to the establishment of effective governance structures more generally for Indigenous people.

The importance of Indigenous decision-making

The right to self-determination connects directly to a further theme explored throughout this book, and that is the importance of Indigenous decision-making. The possibilities for understanding and developing Indigenous decision-making are explored in varied contexts. On the one hand there is discussion of the attempts by government to create Indigenous modes of decision-making through bodies like the National Aboriginal Consultative Committee in the late 1970s to the creation of the elected ATSIC in the late 1980s and the government appointed National Indigenous Council in 2004. The book also explores Indigenous modes of governance which have been developed using both imposed structures, such as corporations and statutory bodies such as land councils, and within independent organisations such as the Aboriginal Provisional Government. Indigenous peoples claiming the right to participate in decision making and control their future are evident in political groups both within and independent of government structures throughout Australian history. The book also contemplates the necessary requirements for new modes of Indigenous governance and representation in the post-National Indigenous Council and new Labor government environment.

The importance of Indigenous political struggle

We noted that it is impossible to understand the contemporary situation which Indigenous people face in their contact with law without a strong understanding of history. It is equally impossible without an understanding of Indigenous political struggle. It is not possible to understand the importance and limitations of the constitutional changes of 1967 without understanding the Indigenous political struggle

against racial discrimination and social and political exclusion. Nor could we understand the establishment of the Royal Commission into Aboriginal Deaths in Custody or the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families without understanding the role of Indigenous organisations in forcing government to confront the effects and ongoing trauma of deaths in custody, imprisonment and the removal of children.

The limitations of Anglo-Australian law

Another theme throughout this book is the limitations of Australian law in resolving the complex contemporary and historical problems that continue to exist. For example, Australian law recognises native title to land, but does so in a way that prioritises the property interests of non-Indigenous people. Another example is customary law. Australian governments, courts and law reform bodies still engage in a 'recognition' debate over Indigenous law, and have done so for centuries now, but always in a context that prioritises Australian over Indigenous law.

A further example is racial discrimination. Australian law prohibits racial discrimination, except when the legislature decides that it is permissible to discriminate and suspends the legislation. While perhaps the overt forms of direct racial discrimination are now less frequent, we know that the legislation has not served Indigenous people well in countering the myriad forms of indirect and institutionalised discrimination that permeate social and economic life. Nor has the prohibition on discrimination impacted on the way governments construct legislation, such as the mandatory sentencing laws in the Northern Territory in the late 1990s, which have a clearly foreseeable discriminatory impact.

This book is concerned with the experiences of Aboriginal and Torres Strait Islander people under the Anglo-Australian legal system but it raises a broader question. When assessing how well a legal system works, the true test is how well it works for the socio-economically disadvantaged, the culturally distinct and the historically marginalised. If a legal system cannot protect those who are the most vulnerable within the community, it raises questions about how secure everyone's rights are and how it can be improved. Aboriginal and Torres Strait Islander people provide a litmus test as to how well our legal system works to protect those who are less well off within the community.

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