

The Day After Tomorrow

A CASSE SYMPOSIUM ON BREAKTHROUGH RECOGNITION

Presented by Creating A Safe Supportive Environment
(CASSE)

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at the Brain Centre
Melbourne University
Kenneth Myer Building
30 Royal Parade
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www.casse.org.au

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BREAKTHROUGH RECOGNITION

Compilation of presentation papers

Part 1 of 3

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CASSE respectfully acknowledges the traditional owners and custodians of the land on which we meet - the Wurundjeri people of the Kulin Nation. We pay our respects to their Elders both past and present.



Left to right: Rob Springall – Chair, CASSE Committee of Management (COM); Jamie Millier Tjupurrula – CASSE Program Manager, Men's Tjilirra Movement, Nathan Brown – CASSE Translator & Cultural Consultant, The Hon Mark Dreyfus QC MP, Pamela Nathan – Director, CASSE Aboriginal Australian Relations Program, Martin Jugadai – RFDS Cultural Consultant, Men's Tjilirra Movement, Senator Patrick Dodson, Anne Kantor – Deputy Chair, CASSE COM, Ken Lechleitner Pangarta – Research Officer, CASSE/CAAC Aboriginal Men's Shed Research Project

Preface

What does a nation that sees, hears and knows – that recognises – all of its peoples look like?

Taking the day after recognition as a possible starting or end point, this symposium journeyed through the unrecognised trails of trauma to shine a light on dreaming breakthroughs to achieve recognition, change minds and save lives.

The invisible heart of Australia is lacerated by the racial divide, which blankets silent suffering and bleeding trauma trails. But remembrance, revival and resilience are reclaiming the ancestral lands, generating tomorrows.

CASSE's symposium provided a forum for important thinkers from Central Australia to share their knowledge and work with some of Australia's key Indigenous, political and cultural leaders.

Attendees included:

- Aboriginal people and representatives from Aboriginal organisations
- Psychoanalytic psychotherapists, psychoanalysts, psychologists, social workers, psychiatrists, counsellors and mental health practitioners
- Thought leaders, practitioners and advocates from the legal, justice, political and welfare system
- Service providers working to break cycles of trauma and violence

- Australians seeking to develop mutual understanding and recognition for a reconciled Australia.

Videos of each of the presentations are available on the CASSE website:
<http://www.casse.org.au/casse-tv/>

This booklet, compiling papers prepared for the symposium, transcripts of key presentations, and key themes presented at the symposium, has been assembled* to contribute to the national conversation regarding constitutional recognition of Aboriginal Australians and will be presented to the Referendum Council for consideration.

****Papers have been assembled in the order they were presented at the Symposium.***

KEY THEMES OF THE SYMPOSIUM:

- We are all collectively the inheritors and generators of the country's psyche and national narrative. The absence of recognition has effectively silenced Aboriginal people from contributing their own story to this narrative.
- Recognition – being seen, being heard, being known – is psychologically essential.
- Recognition can only come from another person whom we, in turn, recognise as different and valuable in his or her own right.
- Psychological recognition constitutes constitutional recognition and vice versa.
- The past has a living presence. By learning lessons from the past, from each other and with each other, we have the possibility of moving forward **together** into the future.
- Disrespect, humiliation, disregard for what is important to you and your people are all extraordinarily toxic.
- Recognition needs to be followed by **respect** - for people and for the rights of people, as individuals and communities.
- 'Contact zones' – such as Alice Springs – 'the eye of the storm' are important for their transformative, generative possibilities.
- 'Recognition' means learning to appreciate each other's complexity and at the same time speaking in clear language that communicates essential facts and clear (not hidden) ideas. It is about thinking clearly, understanding clearly and listening with care. Together.
- Without recognition, a psychological state of terra nullius prevails.
- Psychoanalytic endeavour is the story of recognition. Do you see me? Do you know me? Do you see my pain? Recognising the unfolding emotional world catalyses the narrative of pain and provides the healing transformations from breakdowns to breakthroughs.
- Appreciation of the other's reality – mutual recognition – gives rise to the establishment of *shared reality and empathy*.
- why would you **not** recognise and acknowledge the history and language of Aboriginal peoples – who have inhabited this nation for tens of thousands of years - in a revised constitution of Australia?
- Recognition is about understanding how Aboriginal people can work and live in Australia's mono-cultural structure while possessing bi-cultural richness.

KEY THEMES OF THE SYMPOSIUM CONT:

- Recognition transcends the politics of fear and guilt of the nation and works towards a reconciliation based on truth, healing and justice.
- Recognition involves an opportunity for affected individuals and communities to be supported in recognising who they are and to address their trauma/intergenerational trauma and move towards healing.
- Sharing each other's stories and emotional experiences allow us to envision and dream together. It provides a basis for significant political and social change.
- Recognition facilitates health, psychological growth, aliveness and realness.

Introduction

By Pamela Nathan, Director, CASSE Aboriginal Australian Relations Program

Welcome to you all! We are here to talk about recognition. What does a nation that sees, hears and knows - that recognises - all of its peoples look like? Taking the day *after* tomorrow as the starting or ending point, this symposium will journey through the unrecognised trails of trauma and may shine a light on dreaming breakthroughs to achieve recognition, change minds and save lives.

The issue of recognition is a longstanding one. In 1835 Governor Bourke issued the Proclamation upon which British settlement was based, reinforcing the notion that the land of Australia belonged to no-one. Its publication in the Colony meant that from then, *all* people found occupying land without the authority of the government would be considered illegal trespassers. This would not change until the Australian High Court's decision in the Eddie Mabo Case in 1992, which inserted the legal doctrine of native title in law. Currently, the First Nation are seeking constitutional change. Constitutional change is not an abstract concept or a mere intellectual exercise. Constitutional change is about the real lives, the real life and death struggles of Aboriginal people today; the past has a living presence. Constitutional change is about psychological recognition and about Aboriginal and non-Aboriginal relations. Alexis Wright, *Dirt Song*, writes about the "crying shame to see the country like this" and tells us how to bring the "country back":

Listen for the heartbeat.
The heartbeat now—with the pulse of the land,
The bird; the tree; the grass and the wind
Bringing it up.

Dry country some places now
Too much
I don't know if we will get rain soon.
Who will make it rain?
Some of them old people passed away now,
You know the rainmakers.

They been make it rain.
Make it rain and the country come back.
You got to look after the rainmakers.
People need to listen
Listen carefully
The wind blows strong
Through the tree it blows
Come visiting you
Spirit talking to you
It comes in dreams
You can hear it too
We are made the same, you and I.
Hot wind bringing the goose
Bringing fish
Rain storm.



We will hear from speakers in Central Australia today who will give voice to the realities of non-recognition and recognition. Let us listen carefully. Let us listen to the heartbeat! Today, maybe contributions toward changing minds and saving lives on the journey of recognition can be made, renewing hope and dreamings and give tomorrows to the First Nation and, indeed, the nation of Australia. Let us today look after the rainmakers! Let us grow up country, hold country, look after country, know “that’s his story”, make the country come back, and settle down country. Let us hold in mind the heart of Australia; the ancestral lands of songlines and Dreamtime.

Let us now begin.

Let us find new beginnings.

John, Lord Alderdice



John, Lord Alderdice, by profession a psychoanalytic psychiatrist, was for eleven years Leader of the Alliance Party and one of the negotiators of Northern Ireland's 1998 Good Friday Agreement. The first Speaker of the new Northern Ireland Assembly, he is the recipient of many honorary degrees and awards for his conflict resolution work locally and abroad.

It's a real delight to join you in Australia all the way from Belfast on the island of Ireland. Of course it's a very different place here in Belfast - the weather is very different from the weather you're having. We're on a small island, you're on a great land mass. But there are also some very common features: we are all human beings, we are all people, and in our relationships with each other, as individuals and as communities, we often have problems, some of them historic problems that go back a long way and that create great difficulties for us. Problems that we sometimes find end up with violence, and in other cases people doing harm more to themselves than to other people.

In London, in a previous generation, there used to be signs outside boarding houses that said "No Blacks or Irish". So that question of relationships between people, and between people who are different, whether different from colour or from culture, often create deep difficulties and longstanding and painful traumas. And of course, when people experience trauma themselves, sometimes they take that with them in their relationships and visit it on other people. We know that people who have been physically or sexually abused may end up being very sympathetic to others who have been abused or on the other hand they may end up being abusers themselves.

When people went from this part of the world - from England, Scotland, Ireland and Wales - to Australia some of them were leaving very difficult painful unpleasant experiences behind. Some of them had been accused of crimes and convicted; major crimes, and sometimes remarkably minor misdemeanours. They were sent out to Australia as a punishment.

Others were young children who were taken away from their families or perhaps their families were not able or willing to look after them, and they were sent out to Australia.

So whilst some people from my part of the world went out in a very positive way, others went to Australia in a very negative way. Maybe that helps add to our understanding of the fact that some of them treated First Nation people in Australia particularly badly. Whatever the reasons, there isn't any doubt that the history of Australia is littered with terrible trauma and difficulty, and indeed disease that was brought from my part of the world to your part of the world. Even in my part of the world, we have had difficulties dealing with our trauma and problem. It came forward with us in terrorism and violence. Not just for a few years or decades but actually for hundreds of years and I have spent much of my life, trying to understand why it is, and how it could be, that some people as individuals or groups treat other people as individuals or groups so badly. Treat them as though they weren't really human beings at all. Sadly, as we look around the world at the moment we don't always find that the situation is improving.

One of the most frightening things for me about the way geopolitics is going is the way in which political leaders sometimes talk about others in their own country and in other countries as though they were less than human. That's an appalling situation but we can't - you and I - necessarily change the geopolitics. What we can do is address, analyse, understand and try to make differences for the better in our own communities.

The first thing that is important of course is to **recognise** each other as individuals, and as communities, as real human beings who have their own thoughts, feelings, culture, background and hopes for the future.

That's not been the situation for First Nation people in Australia. Getting recognition as individuals, as human beings, and then getting recognition as First Nations, as first Australians, is still a problem, but I've been really pleased to understand how some progress is beginning to be made. I really, really hope that 2017 is going to turn out to be the year when a big step is made in constitutional recognition of the first Australians, the Aboriginal peoples of Australia. That would be a big achievement, it would be an enormous step, but it is only a step along the road because it needs to move on from recognition to **respect**.

When I have been working here in Northern Ireland, for most of my life trying to understand the conflict and how to change it, it became clear to me that one of the key difficulties was that at least one, if not more than one community here, felt humiliated and disrespected. There were very good historical reasons for that, and even in some cases current reasons at the time I started to work in this area. And it is clear from working with individual people and communities that this is really about the most toxic thing you can experience - disrespect, humiliation, wiping you out as a person, making you feel that all that is important to you and your people is of no value at all and can be tossed to the side; it's extraordinarily toxic. If you have the experience of being humiliated and disrespected, years after you will still remember how that felt and it doesn't feel good. As I've gone around the world to look at other conflicts, and other kinds of conflicts, this is always the thing that keeps coming back again and again: humiliation and disrespect. They are not the only things - but they are pretty much the most toxic. So recognition needs to be followed by respect, and respect for people but also respect for the rights of people, as individuals and communities.

The whole development of our understanding of civil and human rights is really critical, it's one of the great developments of the last 50 years or more. Not that it has answered all the questions, in fact sometimes it has brought forward new questions, but it is really very important. So respect must issue forth in *rights*. But that's not the end of the road. When we started at home here we thought if we could get to the point where there was mutual recognition, we call it parity of esteem, and if we could develop respect rather than disrespect, and if we could make sure that everybody's rights as individuals and communities were protected, then we would have succeeded. We would have dealt with the causes of the violence. Well those things are all important but they are all important in leading to the fundamental, which is *creating new relationships*. All our problems are fundamentally about problems of relationships between people and between peoples.

In my part of the world the politics got reduced down to who was controlling the territory – it was all about land, about the border. There were those people who wanted there to be no border - people from the Catholic Nationalist community wanted a united Ireland separate from Britain - and people who were Protestant Unionists who wanted the relationship with Britain to be maintained, and if that could only be maintained with a border then a border there had to be. So everybody got to concentrating on border or no border, United Kingdom or United Ireland, and they tended to forget that the fundamental problem was not the division of the island of Ireland but the division of the people on the island of Ireland. We couldn't agree how to share this piece of territory, this piece of earth and so the solution was not going to be found in dealing with a border on a map, or even a constitutional border between North and South, but finding a way in which the people of Ireland – north and south – could share this island in an agreed way. It might be shared

on the basis of a border with good neighbourly relations, or it might be shared in the future with no border at all, particularly in the wider context of the European Union, as we had thought at the time. But whatever, it is about relationships between people and peoples. Not just between individual people, you can have good relations between individual Protestants and individual Catholics, individual Unionist and individual Nationalists, but if there is not a good relationship between the whole community of Protestants Unionists and Catholic Nationalists then you still have a problem even if you have individually good relationships. These are really challenging things and it takes us into understanding culture, history, the pain, the trauma, the distrust, the difficulty, the abuse, the massive dehumanization and unpleasantness that has taken place in the past and that carries on not just in our memories of the past but in the way we experience the present and fear sometimes for the future. But the aim in the end is to create those new relationships.

What's really exciting for me about this CASSE workshop is that it's not just focusing on the past, although it's not forgetting about it at all, it's not just focusing on this very important programme of consultation and hopefully a referendum that will be successful in creating constitutional recognition, but it is also looking forward into treating people with respect, ensuring that everybody's rights are understood and accommodated and that in the end we create a new set of relationships. And that will mean ultimately, all of us having to move and develop.

People in the majority community, I think, have now begun to realise that many of the ways that that community is structured isn't good for them; there are issues about the politics, about the economy not really serving the needs of many ordinary people; the question of how we deal with the precious earth, the environment, people are understanding that we have

not been doing good things there; and even in terms of really fundamental questions about meaning, purpose, religion, faith, sacred values, the transcendent – these are all things that people are beginning to ask questions about and to say “You know the way that we as white people, as people from the Western world, the way we follow these things through has not actually been as good as we thought. And we need to find ways of learning and moving forward”.

For Aboriginal, First Nation People, there are also necessary changes – the world has changed. For 50 or 60,000 years Australians lived in a particular way. It was a very tough life, but it was a life through which they gained understanding about the meaning of the world, about their relationship with the world, and about their relationship with each other – but that world has changed.

So it is really important to hold on to the history, appreciate the culture, ensure that the deep insights and understandings of the past are not lost but are developed and enrich our life today and tomorrow, but also that it is a new world and that first Australians need also the chance to develop in their relationship with Australia as it is now both physically and in relationship with other people.

So all of us have lessons to learn from the past, very painful lessons, but we also have the possibility of moving forward, and moving forward together into the future, not in antagonism to each other but in learning from each other and with each other. As you do that you will not only have something to give to each other and to your children and grandchildren but something to give to the rest of the world which desperately needs to understand and learn these lessons.

That’s one of the things that is exciting for me here in Ireland. We have done lots of practical, political, legal and constitutional things; we have ticked lots of the kinds of boxes that you might expect in a peace process; but we still have to make changes of attitude and culture so that we can live together for the present and for a future together. We are learning that – and it’s not easy and we have setbacks, usually created by ourselves in these relationships - but we are also able to move forward in a way that’s positive. I think that is also possible for people in Australia. I very much hope that not only will I get the chance to learn back from Pamela and colleagues in CASSE about this conference, and about the work that you are doing together, but I hope that it will be possible not just to join you in spirit but in person before too long and that together we can find ways of learning and working and developing to create a better world informed by all the cultural experiences and wisdom of the past as well as the new relationships we develop for the future. I wish you well and I look forward to being with you again before too long.

Kieran Finnane



Kieran Finnane is a journalist and arts writer with a commitment to recognising complexity. She has lived in Alice Springs since 1987, writing as a founding journalist of the *Alice Springs News* since 1994 as well as for national publications. She is the author of *TROUBLE: On Trial in Central Australia*.

Meeting in the space between us

As a journalist, I am almost by definition someone who tells other people's stories – Alexis Wright talks about some of the consequences of that in her Meanjin essay (Alexis Wright, 'What happens when you tell somebody else's story/', Meanjin, Vol 75, Issue 4). I take many of her points.

Yet I live and do my journalist's work in a place where 'us' and 'other' are not always or not entirely mutually exclusive. In venturing to talk about this, I obviously need to bear in mind that I speak from a position of belonging to the dominant culture, albeit a woman's position.

Clearly, I can never say 'us' in relation to Aboriginal experience, I cannot see it from the 'inside', but I can try to see and hear when Aboriginal people act and speak, seeking to be seen and heard.

In this sense – and others grounded in day to day life in a place like Alice Springs, of school, sport, the arts, work, not to mention creating families together – it is possible to be part of a community with local Aboriginal people. A community situated in the space between us, where we must go to meet one another. Over the years I have heard a number of local Aboriginal people recognise this sense of community.



A senior custodian for Mparntwe – the Arrernte name for the Alice Springs area – is Doris Kngwarraye Stuart. She dedicates herself to the protection of Mparntwe’s sacred sites, working particularly with artists to create a better understanding of their significance. When she attends public forums, she declines to do ‘Welcome to Country’. “Did you ask before you came here?” she will challenge. She speaks instead about the sacred sites in proximity. But on occasion she will encourage non-Aboriginal people she trusts to do this speaking. She says: “You don’t have to be Aboriginal to respect sites.”

1 Alice Springs News, June 12, 2008, archived at <http://www.alicespringsnews.com.au/1519.html>

A quite trenchant Aboriginal political leader of a few years back, Darryl Pearce, in a public forum on future urban planning, recognised the long relationship between Arrernte traditional owners and the “historical” non-Aboriginal people of the town. “We just don’t want you to turn into the hysterical people,” he said.¹ Not everyone lives up to this hope, of course, but there are many who do or try to.



The history Darryl Pearce recognised and the bridges it has built between people was also called upon by the Arrernte Ryder and related families when their much-loved relative died at the hands of five young white men. I will say more later about their extraordinary leadership at this

And: <http://www.alicespringsnews.com.au/2012/03/22/nose-diving-cbd-it-happened-on-the-11th-councils-watch/>

time, but for now just want to recall the words of one of them, Karen Liddle, in response to the sentencing of the killers: “We all live in this community as Aboriginal and non-Aboriginal people and long-term residents must stick together,” she said.



I have heard Ken Lechleitner, who will be talking shortly, reach out to non-Aboriginal people in this same inclusive way. And he might have something more to say on this.

Margaret Kemarre Turner OAM is a senior Arrernte woman who has operated for a long time as an important cultural go-between in Alice Springs, a role to which she brings great personal qualities of warmth, generosity, optimism, forgiveness as well as deep Arrernte cultural knowledge and commitment.



She is the author of an invaluable book called *Iwenhe Tyerrtye*, with the subtitle, *What it means to be an Aboriginal person* (IAD Press, 2010). It brings together a series of conversations, held in a mix of Arrernte and English, with her longtime friend and colleague, non-Aboriginal man Barry McDonald. She calls him *alere* – “nephew”. In the book’s concluding pages she says this:

“Two cultures can hold each other. I understand that because I know how I can relate with non-Aboriginal people as well as with my own ... Like

that *Penangke* man who worked on the big Arrernte dictionary. There's a different feeling for people when you learn, like you're really close ... it's something like being related to someone in a way that's almost as though they're your own parents ... It's a really good relationship, and it's in a really respectful way." (p220)



She explores these feelings and relationships until she gets to what becomes the final sentence of her book: "Aboriginal and non-Aboriginal people working together as real champions for language, for culture, for Land, and for relationship. *Alakenhe athewe*."

² Peter Bishop, 'The Contact Zone as Imaginal Space', in *Placing Psyche*, edited by Craig San Roque, Amanda Dowd & David

I asked her about the meaning of those last two words, *Alakenhe athewe*. She said, "That's how it is, this belonging."

So I take my starting point from all these generous, thoughtful people when I venture to make some of my own observations of what is going on today in Alice Springs in the space between us.

...

Craig San Roque, and other writers he has made me aware of, speak of places like Alice Springs as "contact zones". I find Peter Bishop², a cultural studies scholar at the University of South Australia, helpful in the way he argues for contact zones being recognised for their *transformative*, *generative* possibilities.

Contact zones arise typically, he writes, in "contexts of highly asymmetrical relations of power, such as colonialism, slavery or their aftermaths". But they also offer "spaces where a *decolonialising* of cross-cultural communication and action can occur, where there can be alternative possibilities". (p26)

In this description I recognise the Alice Springs I live and work in as an *acute* "contact zone" in both senses. The trouble is that most of the time our contact zone is thought about only in terms of problems, oppression, full of conflict and suffering, which we can find almost overwhelming.

When I wrote my book, *Trouble: On Trial in Central Australia*, it was with the clear intention of *not* contributing to those feelings of being utterly

Tacey. Spring Journal Inc, New Orleans, Louisiana, 2011.

daunted. In following criminal proceedings with serious violence, mostly killings, at their heart, contextualising them to the point that I do – with an unflinching attention to the facts but without judgement or sensationalism, with compassion but without sentimentality – I wanted to draw attention to the ways in which Central Australia's trouble belongs to our 'ordinary' – that the day of trouble begins like other days until those moments from which there is no return.

This is why the trouble can't simply be locked away, why it is not susceptible to crude social engineering efforts.

It is in our 'ordinary' life with all its defects that we also find the possibilities and relationships for change.

Of course, we can *all* really struggle to recognise that ordinary – to see our own position in it and to see the position of others. The Northern Territory's protracted dance around its heavy drinking culture, with its known contribution to high levels of violence, is a case in point: governments, including the Commonwealth, tinker at the edges of population-wide regulation while applying bludgeon-type measures to Aboriginal people.

But I actually don't want to spend this time with you today reinforcing a sense of 'us' in The Centre getting nowhere in the face of crushing pressures and non-recognition of one another. On the ground, the perspective can change. What people say and do, change it, in a constant push and pull. It is in that shifting ground that we can find hope and a way forward.

In relation to constitutional recognition specifically, we have yet to hear a collective position from Aboriginal people in Central Australia. Their 'First Nations Regional Dialogue', organised by the Central Land Council, will be held at the end of March. From this three day gathering, they will send five participants to Uluru in April, where the national convention will consider the referendum proposal and seek consensus on the question to be put to all Australian voters.

So, taking up the broader sense of recognition that Pamela Nathan has evoked – of being able to see and know, to be seen and known, and to which I would add *being listened to and heard* – I will turn to some of what I learned in following the grim stories I found in the Alice Springs courthouse, the subject of my book.

...



Most of its action plays out inside this stern bunker of a building.

And some of it, outside, across the road, on the so-called courthouse lawns.



On many a court day the lawns provide a waiting place, where mostly Aboriginal people gather – perhaps ahead of a matter that concerns them, perhaps to show their support and solidarity with relatives who are involved.

These settings are about to undergo significant change, in a manifestation of non-recognition that is a *frustrating* big step backwards.

From the courthouse lawns looking towards the river you can see the grand old tree, a sacred site on an important song-line. Margaret Kemarre Turner describes it as ‘The Foundation Tree’.



‘The family, past and present, belongs to that foundation,’ she says.³

When I wrote my book – little more than a year ago – I was able to talk optimistically about the town’s acknowledgement of the tree, as signifying a move towards greater respect and understanding of Arrernte values held in the land.

In an urban renewal project the clutter of street furniture, signage, and exotic shrubbery around the tree had been cleared away. This made it possible to walk or stand or sit in its presence, and to look further east towards another tree of significance on the river bank.



³ See Finnane, Trouble, e/n 1, p 268.

When a civic ceremony was held to launch the new look of the area, another senior Arrernte woman was doing 'Welcome to Country'.

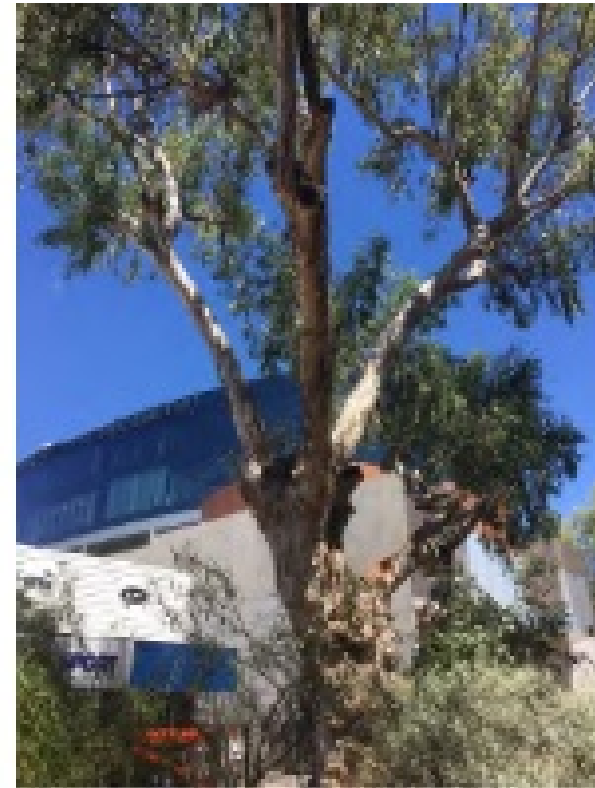
Barbara Satour good-humouredly told the crowd she didn't much care for all the cement around her now, but pointing to the tree towering above, she said: 'That's our statue – it represents all us Arrernte people of Central Australia.'



That was in 2013.

Cut to now. The tree is a shadow of its old self. Over the summer it dropped three large branches and more have since been trimmed.

This may be part of a natural process (not helped by municipal neglect) but it is hard to not see its decline as related at least symbolically to the shadow cast by this new building.



This is the new Alice Springs home for the Supreme Court of the Northern Territory.

The proximity to the tree and indeed the whole presence of this building in the town centre is troubling.

It looms over its surroundings. It is the first structure to have been built beyond the old town-wide height limit of three storeys. It has five.

As such it asserts itself within the triangle around the centre of town created by three sacred hills, which you can see clearly in this Google Earth view.



4 'Town plan on the never never' by Kieran Finnane archived at <http://www.alicespringsnews.com.au/1608.html>

Not so long ago, there was extensive discussion about future urban design and construction showing greater respect to these hills as a way of acknowledging the presence in the land – and within the contemporary town – of Arrernte culture and law.⁴

Since then, that aspiration has not only been ignored but actively undermined. There have been recent insensitive built encroachments on two of the hills, some of them in spite of protest from senior Arrernte custodians.

In this context the Supreme Court building can be read as an assertion in Arrernte country of the towering monolith of Australian and Northern Territory law.

Only one fifth of the Alice Springs population is Aboriginal. In the region, it's more than one third.

Yet Aboriginal people make up 80% of people on the court lists. As a senior defence lawyer working in Alice Springs has commented, 'Aboriginal people are the mainstream in our courts.'⁵

5 Russell Goldflam quoted in Finnane, Trouble, p 25

That is immediately obvious to anyone who frequents the courthouse. The lobby is one of Alice Springs's most intense 'contact zones'.



Comparable others are perhaps the waiting room for Accident & Emergency at the hospital, and the supermarkets, made fraught by the presence of takeaway liquor outlets.

The most benign is the public library, which has worked hard at making Aboriginal people aware of its facilities and at developing collections of specific interest to them. It's a fine example of realising the "transformative, generative possibilities" of our contact zone.

For a long time courts in the Northern Territory wrestled with the contact zone, exploring degrees of formal and effective acknowledgment of the social context of Aboriginal people in the jurisdiction, including the survival of customary law in the lives of many.

However in the post-Intervention years, the judiciary has been forced by the Commonwealth to turn its back on customary law, even for the purposes of sentencing and bail applications. The message has been that mainstream law is not interested in their difference; it and it alone must prevail.



It is in this context, and during the tenure of a conservative government in the Northern Territory, that this arrogant Supreme Court building has been erected and that its message can be clearly read.

...

Acceptance of the message though is another matter. In many ways and contexts Aboriginal people in Central Australia have proved to be remarkably resistant to 'mainstreaming'. This comes with gains and losses, but Aboriginal political voice and strength, as well as the weight of all those things that get summed up as 'Indigenous disadvantage', have

forced change.

As much as some might like to hang onto it, the romantic image of Alice as a hardy Outback town has had to recede, and with it many of the town's political and social complacencies, its oppressions and discriminations. Though others come in their stead, the old frontier / settler ways are critically under pressure from contemporary Aboriginal ways. And this is not just reactive. There are many instances of Aboriginal people and organisations setting their own agendas – Craig San Roque in his paper, 'A Glass Darkly', describes some that he's familiar with. This can even happen, to a degree, in a hardline institutional environment such as the courts of today.

...

I'll look now at some examples of different ways that Aboriginal people have sought to be *seen* and *heard* in court. I'm mostly not talking about the perpetrators here, but the people around them, what they had to say about the perpetrators' actions, whether expressed through resistance to the court's processes, active participation, or, in the case of the Ryder family, as they sought justice through the legal process, using the tragedy thrust upon them to show exemplary leadership to Alice Springs as a whole.

These examples go to, as I see it, a determination of those involved – family of perpetrators or victims – to act in the ways available to them, to not simply be buffeted by events. They also reveal different ways in which the relationship with mainstream law of ordinary Aboriginal people in The Centre is evolving alongside the co-existing and evolving governance of their everyday lives by their own mores and law.

Resistance, first.

A young man, Sebastian Kunoth, just nineteen years old at the time of his arrest, was charged with the murder of his partner, the mother of two of his children, Kumunjayi Nelson. She was twenty-two. He ultimately pleaded guilty to her reckless manslaughter.

After Kunoth had been charged and remanded in custody, there was an early mention of his case in court, by video link from the gaol. I expected the public gallery to be all but deserted. In fact it was full, of some 20 to 30 members of Kunoth's family – as became obvious from their eager smiles when he entered the tiny video-link room.

The court did its brief business, the case was adjourned, Kunoth was told he could go.

As one, the visitors raised their arms in a wave to him. There were more smiles but not so much as a murmur. As soon as he was gone, they all got up and filed silently from the courtroom.

It was a poignant moment, but who was it for? Kunoth may have been able to see a few of them, perhaps an impression of some arms raised, but no more than that. Was it for the magistrate, the lawyers? A show of clan strength, of their own judgment of this son, fiercely loved in spite of what he may have done? Was it for themselves – a way of demonstrating their relatedness, of showing support to one another in a time of trouble?

Whatever the answer, the family continued to make their presence felt throughout the hearing. There was one clear instance of intimidation of a witness (for which a man was convicted and served time) and the

prosecution generally encountered a lot of difficulty, both in getting witnesses into the stand and in getting evidence from them.

About two months after Kunoth's arrest, a man, who came from the same western desert community, was killed in what was said to be a payback for the young woman's death. The killing was carried out by a drunken mob in a protracted ordeal for their victim. Ultimately only four men were held criminally responsible (pleading guilty to reckless manslaughter), with another two convicted as accessories after the fact.

It was clearly not a payback of the kind sanctioned and regulated by customary law, but it was spoken of as a payback by the family of the victim, Kumunjayi Pollard, although they saw it as utterly unjust – he had nothing to do with the young woman's death. In fact he'd been in gaol at the time.

In these brief sketches that I delve into in detail in the book, I think we can see complicated (at times devastating and anarchic) examples of active resistance to the operation of mainstream Australian law.

(Participation)

The Kunoth case also provided a clear example of *participation* in the process, by Kumunjayi Nelson's mother. In particular, she asked for her victim impact statement to be read out loud in the court, so that it would go in its entirety onto the record. In it she spoke lovingly of her daughter's life and the anguishing loss she as a mother felt. As well she made some acute observations about the impact of the killing on her grandchildren for whom she was now caring.

In the case of the so-called payback killing of Kumunjayi Pollard, his family similarly sought justice for their relative through the court process.

In a victim impact statement that was hand-written and signed by several of them, they expressed the view that the guilty men deserved to be sent to gaol for life, and they added to this a wish for a punishment not available to the courts: that the culprits *never* receive visitors.

They also asked to have handed up – to become an unconventional part of the court’s file – a colour photo collage showing the dead man with family members.

Beyond a measure of justice for their relative, they saw that the court process could deliver a message:

‘This has caused trouble for more than this family and this community,’ they said. ‘The true story needs to be heard by *everyone* so it stops any more trouble.’



(Leadership)

My final example is also one of participation in the court's process, but goes well beyond it into the community.

This is a case of which many of you may have heard – the killing in 2009 of Kwementyaye Ryder, a 33 year old Aboriginal man. He died, as I've said, at the hands of five young white men, aged between 18 and 22 at the time. They were initially charged with murder and ultimately pleaded guilty to his manslaughter.

The case was widely covered and commented upon – locally, nationally, including by *Four Corners*, and even internationally. All of the coverage from afar focussed on its racial dynamics and saw it as an expression of the racism inherent in Alice Springs. Some of the coverage and commentary within Alice Springs reflected a similar view.

In my chapter on the case I try to situate it in a social context that is not so sharply divided between white and black and in which we can fruitfully talk about some of its other dynamics, such as the Territory's heavy drinking culture and the ready resort to casual violence – with its possible lethal consequences – by young, very drunk men.

I took my cue on this *in part* from public statements during the criminal proceedings by Kwementyaye Ryder's family. The first of these came shortly after the death, following an early appearance in court of the five charged men.

The Ryder family left the courthouse and gathered on the lawns across the road. There Thomas Buzzacott, Kwementaye's cousin, read aloud a

statement prepared by the family.

It is a remarkable document that I reproduce in full in the book (see pp 95-9). There's not space to go into all of it here, but the first thing they did was call for calm.

Needless to say there was a lot of tension in town at this time, anxiety about possible racist motivations for the killing. Some of this was in response to the aggressive actions of the five accused men towards other Aboriginal people, just before the killing.

But some of the tension was also in response to the killing of a *white man*, allegedly by two Aboriginal men, just four months earlier. That case had almost no media coverage outside of Alice Springs but it provided a very interesting testing of the court's ability – and in a way of the town's – to deliver a fair trial in proceedings dogged by racial issues from start to finish.

It was a murder trial with mandatory life sentences hanging over the accused if found guilty. In the end the jury acquitted one of the accused men – he walked free from the court. The other, who had knifed his victim, they found guilty of the lesser crime of manslaughter.

This case was still not settled though when the Ryder family were standing on the courthouse lawns and calling for calm.



‘We trust in truth for justice,’ they continued. They described the ‘random’ killing of Kwementyaye as ‘a cowardly and despicable act of violence’ – ‘regardless of race’.

The statement then took an extraordinary turn to address the big picture of social division. I expect at the forefront of their minds were the sweeping changes under the Commonwealth’s Intervention, that then was two years old. Perhaps they were also thinking about public places by-laws proposed by the Town Council, being fiercely debated right at that time, as well as the Territory’s year-old overhaul of local government that had dissolved the old system of Aboriginal community councils.

I will read their next two paragraphs unabridged.

‘We call on *the whole community* to support us in helping each other to make necessary changes to current laws and practices that are clearly not working. It is our belief that laws are there to help *all people* to build on *better relationships* and to live in peace and harmony. We need to allow for better understanding of the different cultures and work towards *respecting* our differences and beliefs. This will certainly *reduce violence* in the community which has been affecting each and every one of us. We are calling for *healing of the people* as it is human emotions influenced by drug and alcohol abuse that is impacting on our lives. Current laws are creating unnecessary conflict within the community.

‘This is a vulnerable time when *all young children and youth* need our strength and courage to protect them. It is they who need our constant vigilance and guidance. Through *our love and support* as parents and families we must help them to live better lives, to allow for cultural exchange to broaden their learning in life and help them to achieve their dreams and aspirations. This is a crucial time for the whole community and governments to come together through compassion and understanding as human beings and as one community.’

Such breadth and generosity does not commonly mark the public discourse in Alice Springs and it was not yet two weeks since the death. It was very moving to hear. In the private domain and smaller-scale contexts – some of which I spoke of at the start – there can be great friendship, creative endeavour, goodwill and kindness between people and across cultures, but in contrast the public domain is often small-minded and begrudging, or embittered and full of complaint.



More than most commentators the Ryder family saw in the tragedy of Kwementyaye's death and its circumstances an opportunity for the community to learn and grow.

I wish I could say that Alice Springs as a whole was living up to the large vision of the task before us as expressed by the Ryder family. But there *are* many people in the town, Aboriginal and other Australians, active in a whole range of fields, striving in this direction.

In our contact zone in the foreseeable future this push and pull between oppressive, damaging forces and transformative ones will continue. Bringing to the fore the latter, *recognising* them, will surely help shift the balance.
