

# Aboriginal Land Rights and the Pope's Alice Springs Address: A Personal Reflection

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The twentieth anniversary of Pope John Paul II's address at Alice Springs comes at a time when the issue of Aboriginal land rights, as distinct from concerns over violence and abuse in indigenous communities, has slipped off the political agenda. Unless the federal government, unrestrained by a hostile Senate, moves to amend the *Native Title Act 1993* (NTA) it is not likely in the foreseeable future to demand the sort of public attention it did twenty years ago or in the last decade of the twentieth century when *Mabo*, *Wik* and the Ten Point Plan rocked the nation.

It may, therefore, be difficult for many Australians, including those too young to remember, to appreciate the impact of the pope's address, particularly on Australian Catholics. It was refreshing and invigorating at a time when the political wind was blowing the other way, adding legitimacy to a form of Christian witness considered suspect by many mainstream Catholics ever vigilant of communist influence in movements for reform. But more than a licence the pope's address was a mandate for action:

Let it not be said that the fair and equitable recognition of Aboriginal rights to land is discrimination. To call for the acknowledgment of the land rights of people who have never surrendered those rights is not discrimination. Certainly, what has been done cannot be undone. But what can now be done to remedy the deeds of yesterday must not be put off till tomorrow.<sup>1</sup>

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1. The text of the address can be found in *The Pope in Australia: Collected Homilies and Talks* (Homebush: St Paul Publications, 1986), 170.

What follows is a personal reflection by a non-indigenous Catholic who was inspired by these words to continue the struggle despite the political stagnation, but who now finds himself dispirited by the apparent lack of will in the Australian community to address root causes and seek a lasting answer to the scandal of Aboriginal disadvantage in this rich nation. It is an idiosyncratic account, but hopefully one which when read with other contributions in this issue will give a context to the pope's address and the anniversary we celebrate.

### *Awakening*

My interest in Aboriginal land rights was sparked as a young law student when I read the decision of Justice Blackburn dismissing the Aborigines' claim in the 1971 Gove Land Rights Case.<sup>2</sup> It seemed incredible to me, having read the judge's summing up of the anthropological and local evidence testifying to the complex social organisation of the Yolngu people, that the case could turn on a nineteenth century legal precedent that was so much at odds with the reality portrayed by that evidence. Nevertheless, the judge felt himself constrained by the 1889 decision of the Privy Council in *Cooper v Stuart*, which had held that when Australia was first settled it was 'a colony which consisted of a tract of territory practically unoccupied, without settled inhabitants or settled law'.<sup>3</sup> A nagging sense of injustice led me to explore the issue further. Who was right: the anthropologists or the Privy Council? The works of Ronald and Catherine Berndt and of A.P. Elkin as well as C.D. Rowley's sociological trilogy soon revealed the large gaps in my knowledge of indigenous Australia.

I recalled from my primary social studies how we were taught about the explorers who braved the harshest of conditions to open up the continent and how they were harassed in this worthy enterprise by cowardly blacks who would sneak up on them in the night. Not all Aborigines were portrayed as bad, however. We learned that Edmund Kennedy was well served by the faithful Jacky Jacky in his exploration of north Queensland until he received a spear in the back thrown by one of those cowardly savages lurking in the undergrowth, while the faithful Wylie helped Edward Eyre cross the Great Australian Bight. The message was not subtle: good Aborigines (usually graced with the epithet 'the faithful') helped the white man; bad Aborigines (usually described as savages, treacherous or cowardly) resisted.

But my reading of the anthropologists introduced me to a new and hitherto unimagined Australia, inhabited by peoples who had devised complex forms of social organisation to cope with the challenges of living and surviving in an arid continent. I became aware that, while the European newcomers deployed imported technology to subdue the harsh environment, the original inhabitants, whose country lacked many ingredients essential for technological development, devised social rather than technical solutions to

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2. *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141.

3. *Cooper v Stuart* (1889) 14 App. Cas. 286, 291.

life's everyday problems. Lest it be thought such emerging sentiments owed too much to notions of the 'noble savage', I also learned that many practices they developed were cruel and harsh by standards we now regard as universal. In any case, I was not so much impressed with romantic admiration for the indigenous as perplexed by the complexity of Aboriginal social organisation as described by those writers. It soon dawned on me that *Cooper v Stuart* said more about the inability or reluctance of the European mind to come to grips with Aboriginal society than it did about the society itself.

I was not alone in feeling uneasy at the unsatisfactory outcome of the Gove Land Rights Case. Many Australians shared those feelings, most significantly, Gough Whitlam, whose government soon after its election in December 1972 established the Woodward Commission to inquire into the 'appropriate means to recognise and establish the traditional rights and interests of the Aborigines in and in relation to land'. The result was the *Aboriginal Land Rights (Northern Territory) Act*, drawn up in the dying days of Whitlam's government and passed in 1976 by the parliament under his successor Malcolm Fraser. Though a significant victory for the land rights movement the Act was of limited application territorially, being restricted to the Northern Territory, and conceptually it suffered from the fact that it conferred land on the traditional Aboriginal owners as an act of grace of the federal government rather than recognise their pre-existing right to the land. In other words, the fiction espoused in *Cooper v Stuart* continued to dominate the legislative approach to land rights and would do so until 1992 when the High Court in *Mabo* set it aside.<sup>4</sup>

The legislation's territorial limitation was soon moderated by a series of state enactments conferring land rights generally or on particular indigenous peoples. Ironically, it was the reluctance of the Queensland government under Joh Bjelke Petersen to confer meaningful land rights that led to *Mabo* by prompting the plaintiffs to pursue their rights in the courts. Western Australia, too, dragged its feet. It was no coincidence that the two states with the largest area of land potentially open to land rights claims were the most reluctant to confer those rights – they also had significant mining interests who were opposed to land rights that might interfere with their right to mine on other people's land. Those two states saw significant political disturbances as supporters of the land rights movement buoyed by successes in other states and riding a wave of popular support adopted direct action. In 1983 the newly elected federal Labor government under Bob Hawke decided to intervene and proposed a system of national land rights that would operate across the country.

### **Activation**

It was in these heady days of the late 1970s and early 1980s that I first became active in the land rights movement. Inspired by *Aborigines: A Statement of Concern* prepared for Social Justice Sunday 1978 by the Catholic Commission for Justice and Peace (CCJP) for the Catholic bishops of

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4. *Mabo v Queensland (No. 2)* (1992) 175 CLR 1.

Australia and challenged by its call to Christians to act in solidarity with Aboriginal people in their struggle for justice, I volunteered my services as a lawyer to the CCJP, starting an association with a group of dedicated and talented Catholic men and women that would last for over a decade. In 1981 I was appointed by the NSW bishops to represent them on the CCJP and in 1986 I was elected chairman, an office I held until the CCJP was dissolved by the bishops in 1987.

When published, *Aborigines: A Statement of Concern* created much controversy. Reading it today, I am struck by its moderation, but at the time it was regarded as a radical departure for the Catholic church from its passivity and quiescence on the land rights issue. To some in the community, Catholic and non-Catholic alike, it was an alarming document, especially as it was endorsed by the Australian Catholic bishops. To me as a young idealistic Catholic, disillusioned by the Church's apparent readiness to take strong, public stands on issues of sexual morality but little else, it was refreshing and appealing. Certainly, some of its language was abrasive: 'Where Aborigines tried to resist what they saw as an invasion, the expropriation was accomplished with a violence and brutality which, on the standards by which Nazis were judged after World War II, could only be described as horrendous war crimes.' But it was the document's substance more than its style that provoked concern on the part of some and admiration on the part of others.

At this time the Cold War was still raging and many conservative Catholics harboured fears that communists were manipulating gullible dogooders to advance the cause of atheistic communism. Moreover, the land rights movement was often portrayed in the media as being pitted against mining interests in bitter public rows. Weipa, Mapoon, Aurukun were already the scenes of confrontations between Aborigines and their supporters on the one hand and miners and the institutions of the state on the other. Noonkanbah was soon to follow. Mining companies, wary of the skittishness of politicians in the face of fickle public opinion, were concerned that the Catholic Church had so publicly and forthrightly come out in support of Aborigines.

Tensions between the Catholic church and the mining industry were to come to a head in 1983 after CCJP co-published with the Uniting Church's Commission for World Mission (CWM) a kit advising Aboriginal communities on how to deal with mining companies seeking to mine on their traditional lands. Those of us on the Corporate Study Group, as the ecumenical task force was called, worked hard to produce material that was accurate and informative but accessible to people with low literacy skills. The kit included a comic book, a wall chart and audio-cassettes – in Aboriginal languages as well as English. But we soon learned the lengths to which the big end of town was prepared to go to counteract church support for the indigenous.

The comic book included likenesses of mining company executives, and the Australian Mining Industry Council wrote to the church authorities claiming the material was defamatory. CCJP obtained legal advice to the contrary, but faced with the threat of legal action, Bishop Dougherty, secretary of the Australian Episcopal Conference, repudiated the document as well as

the actions of CCJP and apologised publicly to the mining executives. CCJP staff were directed to pulp the comic book, which they did. The Uniting Church, isolated by the Catholic back down, followed suit. However, fifteen years later the publication received the benefit of parliamentary privilege when Senator John Woodley, who had been associated with the CWM, tabled a copy in the Senate during debate on the *Wik* legislation.<sup>5</sup> I happened to be in the chamber at the time and was delighted that someone had had the temerity to preserve a copy.

The comic book episode exemplified the ambivalent relationship between the Australian Catholic Church and the land rights movement. From colonial times Catholics had been among the leading advocates of justice for Aborigines. Archbishop Polding, in evidence to an 1845 parliamentary committee, described the settlement of the colony as 'occupation by force, accompanied by murders'. W.A. Duncan, editor of the first Catholic paper, the *Chronicle*, echoed such sentiments, while John Hubert Plunkett prosecuted the perpetrators of the Myall Creek massacre. Bishop Dom Rosendo Salvado, who founded the Benedictine Abbey at New Norcia, Western Australia in 1846, devoted his life to improving conditions for Aborigines, persuading the colonial government to legislate to that end. Father Duncan McNab argued for land rights in Queensland in the 1870s. Even the Plenary Council of the Australian Catholic bishops in 1869 denounced the treatment of Aboriginal people by the colonists in language not much less abrasive than CCJP's criticisms more than a century later: 'The stain of blood is upon us – blood has been shed far otherwise than in self defence – blood, in needless and wanton cruelty.' Yet, for most of last 200 years the record has been one of indifference, punctuated by protestations of moral indignation, mostly by committed individuals, including in more recent times priests such as Dick Buckhorn and Ted Kennedy, but occasionally by the hierarchy.

For the most part the 1980s was a time when the Catholic Church engaged at an official level in the struggle for Aboriginal justice, largely through the agency of CCJP, but frequently by the national and state conferences of bishops. Notably, the Queensland bishops, emboldened by the sound advice of a young Jesuit Fr Frank Brennan, engaged the Queensland government in debate over that state's poor record on land rights. In 1980 the Catholic bishops of Australia issued a joint pastoral letter on Aboriginal People, the first since 1869, in which they argued that 'recognisable Aboriginal groups have rights to the ownership of communal land since the land would seem to be at the very core of their identity.' The sentiment was beneficent, even if the language was more general and less passionate than that of their predecessors. The Western Australian bishops were more explicit in their 1983 statement, setting out a number of principles for legislative reform including the recognition of prior occupancy of Australia by the Aborigines, the right of self-determination for cohesive Aboriginal communities living on their own land, and the right to control development on their land. When, in 1983, the NSW

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5. *Commonwealth Parliamentary Debates*, Senate, 1 April 1998, 1788ff.

parliament enacted the *Aboriginal Land Rights Act*, making unoccupied Crown land available for claim by local Aboriginal land councils, it did so following a parliamentary inquiry to which CCJP had made a substantial contribution acknowledged in the inquiry's report.

So, John Paul II's Alice Springs address was not made in a vacuum. Nevertheless, it came at a time when the political movement for land rights was on the ebb tide. Following the election in March 1983 of the Hawke Labor government, the prime minister publicly committed his government to legislating land rights in accordance with five principles consistent with long-standing Labor policy: Aboriginal land would be held under inalienable freehold title; sacred sites would be protected; Aborigines would have control in relation to mining on Aboriginal land; they would have access to mining royalty equivalents; and they would receive compensation for lost land. Steps were put in train to implement the proposal. However, pressure from the mining industry and the WA Labor government, which had itself reneged on a promise to legislate land rights because it was fearful of the political consequences in a mining state of giving Aborigines a veto over mining, saw the Hawke government dilute and then in July 1985 abandon its proposal.

### *New Beginning*

The political stalemate over land rights was broken in 1992 when in *Mabo* the High Court, by a majority, rejected the approach of Blackburn J in the Gove Land Rights Case and overturned the consequences of *Cooper v Stuart*. The court decided that, in the face of the historical facts and modern attitudes to human rights, the common law of Australia, in good conscience, could no longer refuse to recognise the native title of the indigenous inhabitants of Australia. In effect, the judges said that knowing what we know now, it would be unjust for the common law of Australia to maintain the fiction that Australia in 1788 was *terra nullius* (nobody's land). At a conceptual level this was an advance on the existing land rights legislation as *Mabo* did not confer benefits on indigenous Australians; rather it recognised rights to ownership of land which they had possessed for thousands of years before 1788.

Many non-Aboriginal Australians rejected the concept of native title as espoused by the High Court in *Mabo*, refusing to accept that the indigenous people in 1788 possessed, and thereafter never surrendered, rights of ownership to the land. They accused the High Court of judicial activism and responding to public sympathies rather than interpreting the law. But *Mabo* did not invent native title, it merely applied to Australia that part of the common law which had applied elsewhere in the British Empire for hundreds of years. The Canadian academic Kent McNeil, an expert in aboriginal land title, also criticised the High Court. But he argued that the judges, rather than being radical, had in fact watered down the common law principle of native title (e.g. by excluding freehold and leasehold land) in order not to undermine two centuries of Australian land law.<sup>6</sup>

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6. K. McNeil, 'Racial Discrimination and Unilateral Extinction of Native Title' *Australian Indigenous Law Reporter* 1 (1996), 181.

Under the Keating Labor government the parliament enacted the *Native Title Act 1993* to accommodate the decision. At long last, albeit prompted by the High Court, the federal parliament had passed national legislation covering the right of indigenous Australians to land. It was in the context of this legislation that I once more became actively involved in the land rights issue.

When Eddie Mabo and his co-plaintiffs pursued their land claim they had to do so at common law. After 1993 the NTA provided a statutory mechanism for the recognition and protection of native title through the National Native Title Tribunal (NNTT). The first claim to succeed under the Act was that of the Dunghutti people of the Macleay Valley on the mid-north coast of New South Wales, whose claim to native title at Crescent Head was accepted by the NSW government in October 1996 and recognised by the Federal Court in April 1997. In that case I appeared with John McCarthy QC as counsel for the native title claimants.

We had the privilege of working closely with the Dunghutti people in putting together their claim. It involved tracing the history of a number of Dunghutti families back to first contact with Europeans in the 1830s. That the early history of Aboriginal-white contact in the Macleay Valley was for the most part bloody and tragic is unremarkable having regard to that history elsewhere throughout Australia. But what we did find remarkable was the manner in which the Dunghutti had managed to survive the tragedy with so much of their identity and heritage intact.

The case we prepared included anthropological, historical, linguistic and genealogical evidence. It involved many hundreds of hours of work not only by lawyers but by professional consultants, fieldworkers and the Dunghutti people themselves. I found the system somewhat demeaning in that the claimants, who knew perfectly well who they were and from where they had come, had to go to such lengths to satisfy the requirements of the NTA to establish their claim. As John McCarthy remarked of the resources that went into the case, a native title claim is the equivalent of America's Cup yachting. And it could have been worse; fortunately, the Dunghutti claim was concluded by negotiation without the need for a costly court case.

The effort was finally rewarded when the Deed of Agreement was signed on 9 October 1996 at a special ceremony at the Sydney offices of the NNTT. It was the first time in Australia's history that the Crown had formally recognised the pre-existing rights of the indigenous people to ownership of their land. The look of satisfaction on the faces of the claimants was wonderful to behold – they signed the deed not as mendicants receiving a government handout, but as landowners whose rights at law had finally been acknowledged. Since then many other indigenous peoples have had their native title rights recognised under the NTA. But not all. In some cases the courts have found that the tide of history has washed away their rights to the land, most notably the Yorta Yorta people of northern Victoria.

John McCarthy and I continued to act for various indigenous groups, sometimes negotiating agreements with mining companies. Under the NTA, there are strict procedures, known as 'right to negotiate' (RTN), which must be

followed if they wish to mine on land where native title has been found to exist or where a registered native title claim is awaiting determination. But our involvement intensified in late 1997 early 1998 during the parliamentary debate on prime minister's Ten Point Plan.

### *Holding the Line*

On 23 December 1996 the High Court handed down its decision in *Wik*,<sup>7</sup> which was to plunge the country into an intense political crisis that would last eighteen months. In *Mabo* the High Court had held that freehold and leasehold grants of land extinguished native title, but in *Wik* the Court said that a pastoral lease, despite its name, was not necessarily a grant of a leasehold estate – you had to look at the legislation under which the pastoral lease was granted and the terms of the individual lease. There is no doubt the uncertainty this created needed to be resolved, but a just solution required a calm and rational working out of the problem. This was not to be.

Within hours of the decision conservative politicians and industry leaders were making statements that spread alarm in the community. Farmers were led to believe that *Wik* meant they might lose their farms. Even city people began to fear for their suburban backyards. In this climate of fear and misunderstanding, the Coalition government came under increasing pressure to introduce legislation to extinguish native title on pastoral leases. The government resisted that pressure, because of the massive compensation bill taxpayers would be left to pay. However, in order to appease demands for drastic action, the government came up with the Ten Point Plan, which it announced in May 1997. Although it stopped short of the 'bucketfuls of extinguishment' that some ministers desired, the Ten Point Plan did include a number of provisions which either extinguished native title in particular circumstances or which significantly cut back statutory rights which native title holders had obtained as part of the NTA compromise in 1993. It also included measures necessary to remedy problems that had emerged before *Wik*, for which there was widespread support. So, like the curate's egg, the Ten Point Plan as announced by the government was only bad in parts.

The indigenous people and their supporters were outraged by the government's plan to cut back on the rights of native title holders, especially RTN. Indigenous representatives had earlier formed the National Indigenous Working Group (NIWG) to put forward the point of view of native title holders. Over the following months community support for the indigenous people grew; non-indigenous support groups began to form in suburbs and towns throughout the country. Meetings of support were held across Australia, even in blue ribbon Liberal Party electorates. In rural Australia it was often (though not entirely) a different story with calls being made for the government to take a more drastic approach to native title. Very soon it became apparent that the Australian people were divided like they had not been since the Vietnam War.

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7. *Wik Peoples v Queensland* (1996) 187 CLR 1.



The *Native Title Amendment Bill* 1997 (NTAB) was introduced into the House of Representatives in September 1997. It soon passed through the lower house. The arena for debate was always going to be the Senate where the government did not have the numbers. In fact the balance of power in the Senate lay with independent Senator Brian Harradine from Tasmania, a Catholic very much in tune with the pope's Alice Springs address. For one man, albeit a most able parliamentarian, to have to understand the minutiae of such an arcane and complex piece of legislation, virtually on his own, was daunting. Fortunately, Fr Frank Brennan had been assisting him to draft amendments. However, Fr Brennan was needed out in the community, where the battle for the hearts and minds of the Australian people was in full swing.

When in November word of Senator Harradine's predicament was passed to John McCarthy via church circles we soon found ourselves on a plane to Canberra. I had already been there twice before, appearing before the parliamentary inquiry into the NTAB – once in support of a submission by the Human Rights Council of Australia and once in support of a submission by the NSW Bar Association. Over the next seven months, we would make the journey many times, negotiating the detail of the legislation on the senator's behalf with lawyers for the government, the opposition and the indigenous, as well as for the states and territories.

After the Bill was introduced into the Senate, Senator Harradine announced he was prepared to let the Bill pass so long as it was amended to remove its more objectionable elements. Since these elements were seen by the government as essential to its Ten Point Plan, the Bill was defeated. The prime minister in addressing the House of Representatives on 6 December 1997 identified four major areas of disagreement between the government and the Senate. The most important of these was the government's proposal to allow state and territory governments in effect to abolish RTN on pastoral leases.

The Senate's rejection of the NTAB was only the first round in what would ultimately be a three round bout. Under the *Constitution*, if the Senate rejects a bill again after three months has elapsed, the government may dissolve both houses of Parliament and have a general election (a double dissolution). After that election, if the Senate again rejects the bill, the government may require both houses to sit together to consider the Bill (a joint sitting). Because the House of Representatives has about twice as many members as the Senate, there is a strong chance that a government's legislation will be passed at the joint sitting.<sup>8</sup> Of course, the government must first win the general election and be returned with a large enough majority in the House of Representatives to ensure that it will have the numbers at the joint sitting. Senator Harradine's great fear was that, with native title as the cause of the double dissolution, some politicians might resort to exploiting racial tensions in the community for electoral gain. Having regard to what occurred during

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8. In 1974 the Whitlam government had a double dissolution which was followed by a joint sitting. It was able to have its legislation passed at the joint sitting.

the 2001 election campaign in the wake of the *Tampa* and the 'children overboard' affairs, Senator Harradine's fear was no doubt well-founded.

In April, the government again introduced the NTAB into the Senate. In the meantime, lawyers for the NIWG had formulated a compromise to resolve the impasse over RTN on pastoral leases. Their proposal would allow the states and territories to administer RTN but only if they passed legislation preserving substantive rights of negotiation on pastoral leases which conformed to standards set out in the NTA and was approved by the Senate.

Because of internal divisions within the NIWG, the indigenous representatives were not prepared publicly to put forward this alternative RTN. At their request, Senator Harradine agreed to put the compromise proposal to the government. He did so with the private backing of the indigenous leaders, but knowing full well that he would be on his own if there was a public backlash at what might be seen as a 'sell out'.

On the afternoon of 8 April 1998, the prime minister indicated to Senator Harradine that he would be prepared to accept the compromise if the state governments agreed to it. A few hours later, the prime minister informed the senator that Western Australia and Queensland would not agree. Therefore, there would be no compromise. Later that night the Senate again refused to pass the NTAB in the form the government wanted. A double dissolution appeared inevitable.

On 14 June 1998 the country woke to the news that the One Nation party had secured 23% of the vote in the Queensland state elections and that it was likely that Labor would form a government with the support of one or more independents. The Coalition vote had evaporated with the advent of the new party. If the Queensland result were translated into the federal sphere, the Coalition parties were likely to lose government. So it was, that Pauline Hanson and her anti-Aboriginal politics were to provide the lever necessary to persuade the government that the compromise offered by Senator Harradine in April was preferable to a double dissolution which the Coalition now appeared likely to lose. The ALP's attitude also changed. A senior Labor frontbencher later informed John McCarthy and me that a double dissolution was now Labor's preferred outcome.

While the government maintained a public stance of no compromise, a line the media bought, those of us involved in the negotiations knew it was the government, not the Senator, making the concessions and that the government was now prepared to agree to amendments to the Bill which it had rejected in April. It took the government a few more days to persuade the miners, the pastoralists and the state governments that the compromise was necessary in order to save the Coalition from defeat at a double dissolution election. On 1 July 1998 the details of the compromise were finalised and announced.

It was a triumph for the independent Senator from Tasmania, who had held his nerve under enormous pressure. Noel Pearson acknowledged as much that night in his interview on the ABC's *7.30 Report* when he announced that the Senator had won the penalty shoot out 4 – 0, referring to the fact that the government had given in on all four of the sticking points it had said were non-

negotiable in December. In reality the Ten Point Plan had been gutted, but politics is a funny game and losers can appear as winners and vice versa. The indigenous leadership, for reasons not yet fully explained, decided not to support Pearson's assessment. The next morning he recanted and they cried 'sell out'. This allowed Howard to claim victory and to appeal to the One Nation constituency on the basis he had successfully beaten up on the blacks. The ALP, not wishing to contradict the indigenous leaders, was not prepared to expose his victory as hollow. But their true assessment was revealed when at the ensuing elections their platform did not include repeal of the amendments.

Senator Harradine took the bullet, as he always feared he would. In one of the saddest events of the whole episode, Gladys Tybingoompa, the public face of the Wik people with whom he had danced on the lawn of Parliament House in April, publicly denounced him as Judas Iscariot. I believe that hurt Senator Harradine more than any of the barbs the pundits hurled at him. Even today misinformed commentators casually assert that Howard got his Ten Point Plan through, little realising that RTN continues to exist on pastoral leases, thanks to Senator Harradine.

One beneficial by-product of the myth of Howard's victory is bi-partisan acceptance of native title as a legitimate element of Australia's land management system – a remarkable achievement when one considers the vehemence with which the High Court was attacked by conservatives following *Mabo* and *Wik*. Local government in particular has embraced the concept of native title and many councils have negotiated protocols with local indigenous communities, setting up procedures for consultation on land development that might affect native title. Aborigines now sit on boards of management of national parks so that their views can be heard in relation to the management of those parks. The mining industry, a long time antagonist of Aboriginal interests and a vocal opponent of native title, has accepted its responsibilities under native title law.

### **Reality Check**

Nevertheless, indigenous disadvantage remains. In the 1970s and 1980s many believed land rights was the answer. Few would argue that today. In fact a malaise seems to have set in – particularly amongst parts of the leadership of the indigenous community – as a consequence of disillusionment with the lack of native title outcomes. This is due in part to the perception engendered by the myth of a Howard victory that the NTA, post the amendments, is somehow tainted. More significantly, subsequent High Court decisions have contracted the potential of native title to deliver significant land rights to indigenous people in Australia.<sup>9</sup>

During the national catharsis of the late 1990s native title had to bear the load of a whole range of intractable issues, being characterised by some as the

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9. *Western Australia v Ward* (2002) 213 CLR 1; *Wilson v Anderson* (2002) 213 CLR 401; *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422.

devil incarnate, threatening to rob us of our farms and suburban backyards, and by others as the panacea for two centuries of colonisation, subjugation and neglect. Native title is neither of these. It is but one piece in a complex jig-saw puzzle that has as its outcome justice for indigenous Australians and reconciliation for the nation as a whole. On this twentieth anniversary of the Alice Springs address, as the nation is once more scandalised by manifestations of social dislocation in some Aboriginal communities, we need more than ever to find new inspiration in the words of John Paul II in order to renew our commitment to eradicate the blight of indigenous deprivation.

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