

# BOOK REVIEW

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**Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (The Federation Press, 2003) 204pp**

Larissa Behrendt's second book<sup>1</sup> is a translation and a blueprint. The author tackles the difficult task of sorting through the contemporary aspirations of Indigenous Australians and the perceptions and politics of non-Indigenous responses. She provides perhaps the clearest articulation we have of what Indigenous Australians want and need - and how it might be achieved. This book will be debated, dissected, applauded and disagreed with in the years to come, and certainly quoted alongside the work of the most influential legal and social commentators in the field. For the moment, it is compulsory reading for anyone working or interested in Indigenous law and policy.

Behrendt's proposals are unarguably ambitious in the current Australian political climate, but they are clearly and carefully articulated and threaded with much original and compelling logic. Her principle concern is to point out the failure of the superficial 'formal' equality approach to Indigenous issues – arguing that Australia's property laws, criminal justice system, Constitution and education system remain imbued with ideologies and bias. Accordingly she argues that pushes for reform need to look beyond 'small, one-off legal victories' and focus on institutional change – first seeking short-term achievable goals and linking them to longer-term aspirations.

In theoretical terms, Behrendt considers that Australia has for too long been locked in a bi-polarised struggle between 'difference-blind' liberalism and 'multicultural' liberalism. She advocates an outcome-focussed hybrid that embraces both the principle of equality (substantive equality, which will counter institutional ideologies) and the accommodation of difference through participation (which will give institutional form to that 'difference'). Behrendt also rejects the 'either/or' tension that has developed between the notion of 'practical reconciliation' (focusing on immediate Indigenous community needs) and the broader 'rights framework'. She notes the downfalls of a preoccupation with either and encourages the development of a better understanding of the relationship between economics and rights.

Behrendt pays particular attention to the importance of defining what Indigenous communities really seek and need. In the process she examines and explains the concepts of 'self-determination' and 'sovereignty' as used, controversially, in the Indigenous rights debate. She highlights the important point that Indigenous people, at least on the mainland, generally do *not* seek separation from the Australian state.

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<sup>1</sup> Her first book was L Behrendt, *Aboriginal Dispute Resolution* (The Federation Press, 1995).

Two of Behrendt's arguments are particularly thought provoking. First, she makes the point that the Australian self-image – that of conqueror of harsh lands and laconic battler – leaves little room in the national psyche for Indigenous Australians and their prior existence. She argues that this tends to maintain a type of psychological *terra nullius* that permeates the law's handling of Indigenous peoples and their rights. Non-Indigenous readers might initially find some discomfort in such homogenising of the contemporary national self-image, but it would in fact seem that the 'bush-battler' postcard remains loosely accurate. In any event it is perhaps educational to be, for once, the subject rather than the author of a stereotyping description.

Secondly, Behrendt restates well the now famous adage that an Indigenous population's experience in a post-colonial society is an accurate measure of the effectiveness of that society's democracy. And indeed she emphasises the correlative point that institutional improvement through Indigenous rights reform will inevitably benefit other minority groups in Australia.

Most of the critical contemporary issues in Indigenous law and policy in Australia are discussed in this book – for example native title, deaths in custody, the stolen generations, and social, economic and educational disparity. In addition, most of the significant contributions to the debates – including those of John Howard, Hugh Morgan, Noel Pearson, the Dodsons, Henry Reynolds and Cathy Freeman – are interpreted and responded to.

Behrendt writes with an honesty and clarity that is sometimes lost in the Indigenous law and policy debate, and offers constructive proposals where there is too often a tendency to simply critique and disassemble. The book, in this form, is clearly directed to the lay reader. Indigenous rights lawyers might feel that in the simplification she appears, in places, to concede ground too readily on some of the 'small' legal questions that have not yet been conclusively decided. Yet this is perhaps a natural by-product of her main thesis – that the forest must be recovered from the trees.

Perhaps the most important of Behrendt's many contributions to the contemporary Indigenous law and policy debate is the fact that she is clearly and calmly committed to building cross-cultural understanding and trust. These are, while the fashions of debate and jurisprudence come and go, the indisputably essential ingredients for social, political and legal progress in this field.