THREE WIGS
AND
FIVE HATS
By
A E Woodward
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INTRODUCTION

The Eric Johnston Lecture series was established to fill a serious gap in Darwin's cultural calendar, since the city had no lecture series dealing in depth with the Territory's culture and history in all its diverse ramifications.

The series was named after the Territory's then Administrator, Commodore Eric Johnston. Commodore Johnston himself delivered the first lecture in 1986, and has taken a personal interest in the series ever since.

The Eric Johnston Lectures are delivered annually, alternating between a prominent Territorian and a reputable interstate/overseas personality. The topics of the lectures can cover any subject providing the central theme relates to the Northern Territory. The lectures are published by the NT Library Service in its Occasional Papers series, and we are optimistic that the ABC will continue its established practice of recording and subsequently broadcasting the lectures.

The Eric Johnston Lectures have already established themselves as a prestigious and scholarly annual event in Darwin and have made a real and lasting contribution to the spread of knowledge on Territory history and culture throughout Australia.

The 1989 lecture was delivered by Justice Sir Edward Woodward. The title 'Three Wigs and Five Hats' indicated the diversity of his interests and achievements. To most Territorians he is known as 'the father of land rights', since the Aboriginal Land Rights (Northern Territory) Act of 1976 was almost entirely based on his reports as Commissioner into Aboriginal Land Rights. However, he also conducted inquiries into the stevedoring industry and the meat trade, was Director-General of ASIO, and reviewed Armed Forces' pay and conditions, in addition to his judicial duties (which, incidentally, from a Territory point of view, included a close association with the Gove Land Rights case, and with the Crabbe murder case, in which a semitrailer driver killed five people by driving into the Uluru Motel bar).

Thus this lecture exposes us, not to just one aspect of the Territory's recent past, but to the many facets of Sir Edward's involvement with Territory life, and reveals the manner in which changes in our social structure were influenced by his actions.
Justice Sir Edward Woodward
THREE WIGS AND FIVE HATS

May I begin by saying how much I appreciate the honour you have done me by inviting me to speak to you tonight. To follow in the footsteps of Commodore Eric Johnston, Professor Manning Clark and Dr Ella Stack is enough in itself. To be officially designated for purposes of the occasion, by the demanding standards of the Top End, as 'a reputable interstate or overseas personality' is a signal honour.

I must next break one of the cardinal rules of public speaking and start with an apology. Because I understand one of the chief aims of this lecture series to be 'the spread of knowledge on Territory history', I have felt constrained to contribute what I can to that admirable objective. I have often urged older men to record their views of the events they took part in, even if the records are never published, so since I now qualify as a senior citizen for most purposes, I must not shirk the task myself. But the inevitable result is the excessive use of the first person singular and it is that for which I offer my apologies.

I recall, when I was a Judge's Associate, being told a story by Mr Justice Barry about Sir Charles Lowe, both of whom figured in the history of the Territory because J V Barry QC was Counsel assisting Sir Charles Lowe in his Royal Commission which followed the Japanese bombing attack on Darwin on 19 February 1942. But this story concerned Sir Charles' delight in punning and generally playing with words. They sat together at an address delivered by Sir John Latham, Chief Justice of Australia, soon after he had been knighted in 1935. He used the first person singular a great deal and, after a time, Lowe whispered to Barry, 'You know, Barry, this is the first time I have fully understood the saying "the knight hath a thousand Is"'.

I shall try not to transgress any more than can be avoided.

I first heard of Darwin from my father, who spent nine months here in 1943. He had been in the Middle East for three years and was sent to Darwin twelve days after returning to Australia. He was not well pleased with this posting and I think that it may have given him a somewhat jaundiced view of the delights of wartime Darwin. He spent those nine months as the senior staff officer - Brigadier General Staff - to Major-General A S (Tubby) Allen.

This was at a time when the threat of Japanese invasion seemed at its highest, and Major-General Allen had under his command three infantry brigades, a cavalry regiment and an independent company, together with some artillery, 1500 administrative and signal troops and 800 shore-based naval men.

The threat did not develop; most of the troops were dispersed by the end of 1943 and my father returned to Land Head Quarters, at Victoria Barracks, Melbourne, as Director of Staff Duties. I am sure most of you
will have read Professor Alan Powell’s fine account of the war years in Darwin in ‘The Shadow’s Edge’, so I say no more about them.

I nearly reached Darwin in 1965, when I was briefed by the Commonwealth Government to appear in the Arbitration Commission in the claim brought by the North Australian Workers’ Union for equal pay for Aborigines in the cattle station industry. I had time to state the Commonwealth’s attitude to the claim at a hearing in Melbourne, but then had to hand my brief over to Jim (now Sir James) Gobbo before the case moved to the Territory, because the Government wanted me to conduct a waterfront inquiry.

I am surprised to note that, in my explanation of the Commonwealth’s sympathetic but cautious attitude to the claim - cautious because of the fear that a too hasty implementation of equal pay would do Aboriginal stockworkers and their families more harm than good - we were still speaking in those days of a policy of assimilation. This changed soon afterwards to a more realistic and less patronising policy of integration which I suppose is now subsumed by the vexed concept of multiculturalism.

We said in our submission that if the employers’ view, put by Mr John Kerr QC, that only a very few Aborigines were worth an award wage, was accepted, then the immediate imposition of equal pay - in place of the existing provisions for a low rate of pay combined with an obligation to provide keep for the worker and his family - would result in a thousand Aboriginal stockmen losing their jobs overnight.

The Commonwealth gave its opinion that the employers had ‘painted an excessively gloomy picture of the work value, present and potential, of the Aboriginal’ and went on to suggest a staged shift to award rates over a fixed period.

When I did eventually reach Darwin in 1966, I wore the traditional hard hat of the stevedoring industry. I had been asked by the Federal Government to conduct an inquiry into the industry which at that time was very turbulent. I recall being told by Billy Snedden that the industry was a graveyard for the reputations of inquirers, and I should never have agreed to do it. I was probably fortunate in that the unions refused to cooperate with the inquiry, and it was therefore decided to establish a conference involving the waterfront employers, the Waterside Workers Federation, the ACTU, the Department of Labour and National Service and the Australian Stevedoring Industry Authority. I was asked to chair this conference which was designed to seek agreement on a number of issues that were plaguing the industry, particularly the question of permanent employment in place of casual hiring. In spite of the great fluctuations in demand for waterside workers, the union was pushing the view that, if men were required for the industry to the exclusion of other effective employment, the industry had to accept the responsibility of supporting them with a weekly living wage.
The original inquiry was still theoretically afoot, and I was supposed to examine port facilities and make recommendations on matters that did not directly affect the unions. In the event, that report was never asked for, and I cannot now recall what I would have said about Stokes Hill Wharf - which may be just as well.

In carrying out the conference role, I visited almost every port in Australia and certainly came to Darwin more than once. Darwin was one of the smaller ports which presented special problems because so often there would be no ship in port at all and it was very difficult to apply any system of permanent employment or guaranteed wages on the wharves. Some waterside workers in Darwin had other jobs which they would put aside when required on the wharves; others were dependent on wharf work. I can recall little of the special problems of Darwin, apart from the fact that there were some work practices which had developed over the years that were strange even by the standards which had grown up in the industry generally.

After the conference had reached agreement on basic principles in 1967, it was reconstituted by statute as the Stevedoring Industry Council, and proceeded to oversee the introduction of permanent employment in the major ports and to tackle the problem of extending the concept to ports such as Darwin. We finally dealt with Darwin in 1971. There were then 190 waterside workers registered for work, down from 250 six months earlier and, over a ten-week period from December 1970 to mid February 1971, the daily requirement fluctuated from nil on a number of days to 400 at the peak.

In the following three months, 15 vessels called in for periods ranging from two to eight days, but half of these calls were by ships of the Western Australian State Shipping Service, and its future was in doubt. The Council tackled the problem as best it could and tried to get agreement to reduce the number of casual workers on the lists in Darwin by encouraging some to transfer to other ports or retire, thus making more work available for the central core of workers. It was generally thought that, even if the State Ships continued to call, the port could be manned by 135 waterside workers with occasional use of outside labour. Debate on the problems of Darwin took place at each of the Council meetings in 1971 without any resolution being reached, largely because of the uncertainty over the State Shipping Service which was trying to obtain a satisfactory Commonwealth Government subsidy and which finally decided to cease operations to the Territory in December 1971. Before the Darwin situation was resolved, I had resigned from the Council.

My main impressions of Darwin during those first visits - putting aside trivial matters, such as the noise of the air conditioners in the new Koala Motel (now, I believe, the Telford Top End) which then provided the best accommodation in town, and the fact that red wine was invariably served straight from the refrigerator - were set out a few years later in responding to a welcome given to me by the local profession when I took my seat as an additional Judge of the Supreme
Court of the Northern Territory. I said, 'I found Darwin to be a most interesting city. In the first place it is, as I see it, something of a window on Asia and, indeed, Australia's gateway to Asia, and I am one of those who believes that is where Australia's future lies, and that this gateway is going to prove more and more important over the years to come. Secondly, Darwin is obviously the most cosmopolitan city in Australia. I think it is a great example to the rest of the country in community living. Lessons can be learned here of the ways in which people from different backgrounds, different races, are able to live together in harmony. Thirdly, of course, Darwin still has some of the aspects of a pioneer boom town, an exciting place to be living in when development is proceeding as fast as it is'.

Looking back on those pre-Tracy days from today's perspective, some other impressions made upon me in my early visits were, first, the relaxed lifestyle and the large amount of serious drinking which resulted in the Stuart and Arnhem Highways being solidly lined for miles with tin cans; secondly, the large number of itinerants in town and the fact that so many people in employment, whether working for government or the private sector, were only there for about a two-year stint before returning to the South. There was, of course, a solid core of long-term residents who were very proud of the Territory and who provided its backbone and stability. But they seemed to be outnumbered by those who were just passing through or, at best, staying only for a few years.

Returning to my sequence of headgear, the next time I came to the Top End, I put aside the hard hat and overalls I had worn on the wharves and brought a wig and gown instead. I had been briefed to appear in the Gove Land Rights case which was much the most difficult and important case which I handled in twenty varied years at the Bar. This required several trips to the Territory for conferences and hearings in 1969 and 1970.

The case was sponsored by the Methodist Church which had conducted a Mission at Yirrkala since 1935. After the Mission was established by Reverend Wilbur Chaseling, many of the native peoples of eastern Arnhem Land had come to spend most of their time in or near the mission station where they could be assured of supplies of meat, flour, tea and tobacco. The various clans which had gathered there continued to visit their tribal country from time to time, particularly in the dry season, and they had come to accept that white men would also travel through the country and at times would sink holes as they prospected for minerals or in some other way would interfere with the land. But they never stayed; and even in the war years when the RAAF set up an inland airfield and a flying-boat base on the Gove Peninsula, the people understood that this was temporary and that when the war was over the airmen would go - as they did.

No doubt they felt confident that their general possession of the land would not be disturbed because it had been turned into an Aboriginal Reserve in 1931. However, they became worried when a new mining company, Nabalco, appeared on the scene and started to carry out
substantial earthworks, some of which involved interference with sacred sites. When they discovered that part of the reservation had been excised for mining purposes, the people at Yirrkala became very concerned for the future. They took to Parliament a petition drawn up on bark, and the Methodist Church decided to assist them to see whether there was any way in which the grant of a mining licence to Nabalco could be prevented. A Melbourne barrister, John Little, had been asked to advise and he had said that he thought there was an arguable case. I was then brought in to give a second opinion, and I also believed that it might be possible to mount a case, based either on the breach of faith involved in taking the reserved lands away or upon the fact that Aboriginal people had occupied this land, without significant disturbance, ever since the white man first appeared on the scene.

As our research deepened, we realised that there was an even better argument which could be put, based upon some old authorities recognising communal title in Aboriginal peoples, in cases concerning the United States, Canada, New Zealand and Africa. As the case developed, we discovered also that some fairly strict instructions had been given, first to Governor Philip, and later to those responsible for the first settlements in South Australia, concerning the protection of the usage of land by Aboriginal people. It was clear that these instructions had not, after the first few years, been observed.

I always recognised that, although we had an arguable case, the weight of authority was against us and it would take a rather special judge, first to have the patience to listen to a lengthy presentation of evidence and argument on such a novel subject (so far as Australia was concerned) and, secondly, to take the rather courageous step which would be required to find in our favour. In choosing between a single judge of the High Court and a judge of the Northern Territory Supreme Court, we were fortunate to have in Mr Justice Blackburn a man who was deeply interested in Australian history and in the Aboriginal people, and who was prepared to consider our argument with great patience. In the event, we were not able to persuade him to take the long step in departing from conventional wisdom on the subject, which we would have wished.

I was assisted by John Little and John Fogarty, now Mr Justice Fogarty, a senior judge of the Family Court. Against us were ranged RJ Ellicott QC, the Commonwealth Solicitor General, WO Harris QC of the Victorian Bar, later Mr Justice Harris of the Victorian Supreme Court, MH McLelland, now a judge of the Supreme Court in New South Wales, all appearing for the Commonwealth, and LJ Priestly, now a judge of the New South Wales Court of Appeal, appearing for Nabalco. They made a formidable team and fought the case hard, although with scrupulous fairness. I should say in passing that the Commonwealth was kind enough to agree to pay our fees also. We had started out working without reward, and were relieved to know that someone was prepared to pay.

It was one of the sad ironies of the case that almost the last witness called by the Crown was the same Reverend Chaseling who had started
the Mission in 1935. His name had quite often been mentioned in the early part of the hearing, and we had thought of him as an historic figure, not realising how young he had been when he established the Mission. He was now in his sixties and living in retirement in Sydney. I say it was sad, because he came back to give evidence against the claims of the people whom he had done so much to assist thirty and more years earlier. Fortunately, his amateur anthropological investigations, although they led to very firm convictions on his part, were not accepted by the Court in face of the evidence of two eminent experts who gave evidence on behalf of the Aborigines. No other anthropologists could be found to contradict the views that Professors RM Berndt and WEH Stanner expressed.

The result of the hearing was that Mr Justice Blackburn found that Aboriginal law did, indeed, provide for a direct relationship between Aboriginal clans and particular identifiable areas of land. However, he said that the Aboriginal people belonged to the land rather than the land to the people; there were no proprietary interests which the law could recognise, and it was for this reason that the claims were dismissed.¹

I took the view that the finding of close identification between particular groups of people and particular land was sufficient to mount a claim for recognition of Aboriginal title at a political level. I had no confidence that the High Court, as it was then constituted, would produce any better result for the Aboriginal people than had already been achieved. Indeed, I was afraid that doubts might be cast on Blackburn J's findings about Aboriginal law. I therefore advised against an appeal.

Thinking back to those days in court, I think my strongest recollection is of the calm dignity of the elders of the several Aboriginal clans, who must have felt very much out of place in this strange white man's ritual; and yet, they were so well mannered that they did not allow their amusement to show until they returned to their homes at the end of each week. I remember Professor Stanner describing for me what he called the 'jollification' that would accompany the inevitable demonstrations around the camp fire of the way in which we behaved in court.

I was made an honorary member of the Rirratjingu clan and saw a great deal of Roy Marika who was our chief witness and who coordinated the evidence of the older men. Of them I remember in particular Birrikiti, the 'Keeper of the Secrets' of the Dhalwanggu clan, and Munggurrrawuy, elder of the Gumatj clan. They, along with Monyu of the Galpu people and older members of other clans, told the Court how the lands had been given to them by their Dreamtime ancestors, the Djankawu sisters and Barama. They were very patient with us as they explained how their fathers and uncles had told them, when they were children, how

¹ Milirrpum v Nabalco Pty Ltd and the Commonwealth of Australia (1971) 17 FLR 141
the land had been divided amongst the people by these spirit ancestors; but we had constant problems in trying to fit their wide-ranging stories and recollections into the form of evidence which would satisfy a court of law that particular pieces of land had belonged to their direct ancestors for a period of time, in the words of the Common Law, 'beyond which the memory of man runneth not'.

When not required in court, these old men and their relatives would sit on the ground outside the court building, wherever they could find a little shade. I remember the day when an unfortunate lizard wandered too close and finished up on a small fire around the side of the Courthouse.

The interpreters, who were changed from time to time, depending upon which language was being used, and how tired they were, were a teacher from the Mission Station and also some of the younger men who had been through school and had a good grasp of English. These included Gularrwuy Yunupingu.

Another clear memory I have is of the great facility with which older tribesmen who had no formal education were able to read both maps and aerial photographs, although they had not seen such photographs before. It was as though they naturally have a bird's-eye view of the country that they know so well.

After the Aboriginal evidence had been led in Darwin in May and June 1970, the case was adjourned to Canberra for the presentation of historical evidence and the hearing of legal argument. The judgment was delivered in April 1971.

It was two years before I was to return again to the Territory, back in overalls and protective headgear, this time as the Chairman of an inquiry into Armed Services' pay and conditions which I had taken over from Mr Justice Kerr, later Sir John Kerr, when he was appointed Chief Justice of New South Wales. I also took his place on the bench of the Commonwealth Industrial Court and the Supreme Court of the Northern Territory and the Australian Capital Territory.

Much of the work on pay and allowances for skill had already been done, and the main task remaining when I became the Chairman was the working out of special allowances in lieu of overtime and for such activities as flying, parachuting, deep-sea diving and serving in submarines. We were also concerned with living conditions, and it was mainly this which caused me to visit the three services in Darwin. The thing that impressed me most in talking to the servicemen and their wives was that few people were undecided about their attitude to living in the tropics in general and Darwin in particular. They either loved it or they hated it. I could understand both points of view. In particular, life could often be hard on a young wife who was used to living in a big city and was either tied down by young children or could not find congenial employment. I can see the problems of family life, for those who are posted to the Top End without having volunteered, as looming large among the difficulties which the services will have to face in
pursuing their very understandable policy of defending the North in reasonable strength, with the establishment of the new RAAF Base at Tindal and the corresponding build-up of the other two services in the North:

The only compensation which we felt able to recommend at the time was the Public Service District Allowance, though we left an opportunity for a higher claim if it could be shown that there was some relevant and important feature of service life in the Territory which did not apply to civilians.

Among the areas of work which particularly impressed me in the course of my inquiries was the difficulty of serving in the small patrol boats which play such an important part in defending our coastline - not only against theoretical enemies but, more immediately, against trespassing fishing boats, illegal immigrants and the possible spread of diseases, such as rabies. In my innocence, I had assumed that life on a patrol boat (given a friendly skipper) would be fairly idyllic, but I had not understood until it was described to me, what it can be like in these small craft in the teeth of the south-east trade winds, let alone some of the other storms that can blow up so suddenly in these northern waters. The resulting seasickness and the difficulty of preparing hot food were only two of the inconveniences which accompanied long periods at sea on patrol in these smaller craft. It was largely the conditions on these boats and on the then largest vessel in the navy, HMAS Melbourne, which led us to recommend a special seagoing allowance to compensate sailors for the uncomfortable conditions, lack of privacy, inability to use leisure time effectively, exceptionally long hours of work and almost complete loss of home contacts, experienced while actually at sea.

I had only just completed, with my fellow members, the Report on Armed Services Pay and Conditions, when the Whitlam Government came to power and, in its first few days, I was asked by Gough Whitlam to undertake a Royal Commission into Aboriginal Land Rights. Whitlam made the decision in principle that land rights should be recognised: my task was to advise the Government how to go about it. I was pleased to accept the invitation, first because of the interest and importance of the subject and, secondly, because I was anxious to try to demonstrate that it is possible to conduct a Royal Commission without taking years to do it and costing the taxpayer millions of dollars. I had had some experience of Royal Commissions where exactly those things had happened.

In the event, the task took me about eighteen months, in which time I travelled through much of the Northern Territory, visiting both government settlements and mission stations, as well as Aboriginal communities in Darwin, Alice Springs and some cattle stations. These discussions with Aboriginal communities were strictly informal, although notes were taken, and were attended by whoever wanted to be present.
I felt, after a number of these meetings, that I had a reasonable picture of Aboriginal hopes and expectations. At the same time I was receiving submissions in writing from other interested parties, including government departments, representatives of the mining industry and the cattle industry and other groups and individuals who might be affected by any recommendations that were made. After having reached a number of tentative conclusions, I made an interim report, which indicated the lines along which I was thinking and also took the opportunity of establishing Northern and Central Land Councils which would enable Aborigines to be legally represented in the closing stages of the hearing when formal submissions could be made.

I realised, in making some rather arbitrary recommendations about the compositions of these Land Councils, that I was setting up organisations which were quite foreign to traditional Aboriginal arrangements. However, it seemed to me that only by creating two substantial bodies such as these would it be possible for them to afford the assistance that they were obviously going to need, not only in making representations to the Royal Commission, but also in carrying out any recommendations that might be made and representing their people in the longer term. I recognised the tensions that must arise in such large organisations, and I can well understand the fact that some groups have already shown a desire to break away from the Councils that were originally created. I think that this is a natural process, but it would, in my view, be very sad if the Councils were to be so fragmented that they amounted to no more than a series of minor groupings, none of them having sufficient resources to employ the professional and other assistance which it needed or being able to speak with sufficient authority to make its voice heard in dealings with government.

I recognise that in this, as in a number of the other recommendations that were made, the answers given are far from satisfactory. Indeed, as the Inquiry developed, I reached the conclusion that there are no good answers to many of the problems which white settlement has created for the Aboriginal people. I have in mind such difficulties as alcohol abuse and dependence on unemployment benefits, as well as inadequate housing and municipal services. All that can be said is that, for each of these problems, there must, as a matter of logic, be one solution which is better than any others available. The task of all those interested is to find that solution, while bearing in mind that it may change over time, and so a flexible approach is essential. Another conclusion that I reached was that problems such as these are so deep-seated that it is quite unrealistic to expect that the best answers can be arrived at in a period of a few years. I think it must be accepted that, in coming to terms with the difficulties that have been created, we must think in decades rather than years, and hope to move gradually towards solutions that will be generally satisfactory.

It annoys me to hear some politicians and others describe the Aboriginal aspirations for recognition of land rights as a form of apartheid. In my view, all that most Aborigines want is a chance to pull back from the well intended but, I believe, misguided aim of
assimilation which dominated the planning of Aboriginal affairs in the 1950s and early 1960s. The movement to outstations is an attempt to achieve a breathing space, and I was impressed by the fact that, whenever these settlements were established, the people concerned were, in my experience, anxious not to be cut off from health services or teaching for their children. Of course, the desire to retain these advantages of modern living, along with such things as a permanent supply of good water, can place enormous burdens on the financial resources both of the communities themselves and of government. Compromise is inevitable. But the two most positive features of the Aboriginal way of life are its emphasis on the community rather than the individual and the importance of spiritual connections with land and other living things. These advantages must be preserved and built upon if the Aboriginal people are to regain their self-confidence and independence, so that they can plan their own futures as part of the wider Australian community.

I have no doubt of the genuineness of the claims to land made by tribal Aboriginals. I have often bumped about in the back of the Mission utility truck as the local people pointed out landmarks and told me to whom they belonged. I do not think they even noticed the fences, where there were any; they were an irrelevance. When questioned more closely, people from different clans agreed and, by way of confirmation, told something of the Dreamtime legend which established the particular claim. Aboriginal relationships to the land are complex, as Mr Justice Blackburn found, as I recorded in the report of my Royal Commission and as a succession of Land Rights Commissioners, from Mr Justice Toohey onwards, have found most clearly. But the links can be established by painstaking inquiry.

After the interim report had been made, suggesting various tentative solutions, I allowed time for the formation of the Land Councils and for them to engage legal advisers and arrive at considered submissions. Then the only formal sittings of the Royal Commission were held in Darwin and Alice Springs to give all interested parties an opportunity of commenting on the tentative proposals and to put forward any other ideas of their own. In this way all the possible approaches were brought out into the open, so that it could not later be said that any recommendation had been made without interested parties having the opportunity to comment on it.

The final recorded cost of the Royal Commission was $35 800. To this would have to be added my own salary and that of my two assistants, one of whom was my Associate and the other an expert anthropologist who had been retained to help me, particularly in my dealings with Aborigines. These costs included a trip to the United States and Canada to look at the problems of the North American Indians and the Eskimo people, whose situations are remarkably similar to that of the Australian Aborigine. The main difference is historical. Whereas the

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2 For a strong defence of this policy of assimilation see: HASLUCK, Paul. Shades of Darkness; MUP, 1988
American Indians, in many cases, had land bought from them by treaties which were later invariably broken by the white authorities. Paradoxically in Australia, because nothing at all had been done to recognise Aboriginal land rights, there is now a clean slate upon which to write. In North America the situation was bedevilled by the broken treaties which promised much to those Indians who could now claim under one of them, and little or nothing to those whose lands were not the subject of a treaty. Thus, much of the argument in North America was upon the interpretation and attempts at enforcement of these ancient documents. It was also largely concerned with financial compensation, particularly in the United States, rather than with establishing present communal title to land.

I am not in a position to judge the success or failures until now of the recommendations which were made in 1973. I am, of course, conscious of the fact there has been a great deal of litigation arising from the resulting Aboriginal Land Rights (Northern Territory) Act 1976. I suppose that was inevitable, given the natural desire of some interested parties to restrict the areas of land which might become the subject of land rights.

I understand that, in many ways, the Aboriginal people have taken upon themselves responsibility for their own futures. Inevitably, there will have been areas of failure due to incompetence or lack of interest or nepotism or any of the other possible causes which arise from thrusting responsibility and decision making upon people who have for decades been discouraged from making their own decisions. This is where what I said earlier about solving problems over decades becomes particularly relevant.

In spite of all the problems which community leaders have with disillusioned and unemployed young people, alcohol abuse, the establishment of viable commercial ventures and the provision of health services and other community needs, I cannot believe that the self-determination of recent years is not a long step in the right direction.

I could not help noticing in 1972-73, the lack of respect which a number of mission staff showed for those around them. There were many honourable exceptions but, in a number of cases there was little or no real consultation; the missionary calling seemed to emphasise direction and guidance rather than support. I was saddened in one case to find that a minister who had devoted his life to the same people for decades had never bothered to learn more than a few words of their language - just enough to give simple instructions to the older people who had no English.

The staffs of government settlements were also a mixed bunch. Like the missionaries, the best were very good but others did only what they had to, and some set a poor example in sobriety.

In my view it is far better to let the Aboriginal people make their own mistakes and, one hopes, learn from them, than to persist in trying to
protect them from both the perils and the achievements of decision making.

Both before and after the Royal Commission on Aboriginal Land Rights, I had some opportunities to put on my judge's wig, (originally worn by Sir Isaac Isaacs, Chief Justice of the High Court and later Governor General) and sit from time to time in the Supreme Court of the Northern Territory. I did so as often as I could because the work there, and in Canberra, was so much more varied and interesting than the work of the Commonwealth Industrial Court. Indeed, I would not have accepted appointment to that Court if it had not carried with it the other two appointments. I sat as a Judge of the Supreme Court of the Northern Territory on a number of occasions in both Darwin and Alice Springs and I tried both criminal and civil cases. Included among them were a number of divorce and other matrimonial actions which led me to the conclusion that the easy-going lifestyle of the Territory, and the large number of people who had no firm footing there, tended to put unusual pressures on the maintenance of family ties.

One interesting case I was asked to try involved two well-known Territory identities and therefore could have caused embarrassment to the local judges, who knew them both quite well, if one of them had had to hear it. I have often quoted it since as an example of the type of case that ought to be settled if it is humanly possible to do so, because the court's decision cannot be entirely satisfactory. It was a claim for agent's commission on the sale of a portion of a cattle station lease. The point in dispute was whether the property owner had actually engaged the businessman as his agent or had merely mentioned, as between friends, his wish to sell the land. There was no doubt that the businessman had introduced the eventual buyer. I found that there had been a genuine misunderstanding. The best solution would have been the payment of a reduced commission, but that was not open to the Court which had to decide entirely in favour of one or other. In the event, the businessman had his verdict, but the real winners, as usual, were the lawyers.

So far as the application of the criminal law was concerned, I was greatly impressed by the care with which Aboriginal accused were treated by my brother Judges Forster and Muirhead. Following in the footsteps of Mr Justice Blackburn, they demonstrated a sympathetic understanding of the problems involved which I tried to take as my model in the comparatively few cases which I had to deal with. I would like to pay my tribute to the judges of the Territory and particularly, the three I have named because those are the ones whose work I know best. I think the Territory has been remarkably fortunate in having men of that calibre available to it as its senior judges.

I was prevented from doing very much work on the Territory Supreme Court by my appointment in 1976 as Director General of Security. In that capacity, and clad now, metaphorically, in cloak and dagger or trench-coat and trilby hat, depending on one's mental picture, I made several trips to Darwin over the years that followed. I came in order to talk to the small team of officers who then worked here and to liaise
with the civil authorities, particularly the Chief Commissioner of Police. There is, of course, not a great deal that I can say here about that aspect of my life. It is notorious that there are some sensitive defence installations in the Darwin area, and during my years of office there were also particular problems arising from the Indonesian occupation of Timor and from the arrival of boat people from Vietnam. These and other considerations justified the maintenance of a small outpost in Darwin at that time.

I might just say, in passing, that I wondered at the time how we would have coped if the Indonesian Navy, instead of turning the Vietnamese boats away, had guided them through the archipelago and pointed them towards the Australian coast. It remains a worrying thought that internal turmoil in Indonesia could one day lead to a similar, but much larger, exodus of refugees. Fortunately, there is no present sign of any such possibility, but I still wonder how Australia would handle it if it occurred.

Immediately after my appointment as Director General of Security came to an end in 1981, I was asked to conduct an inquiry into the meat industry in order to determine how it came about that kangaroo meat was reaching the United States disguised as beef. This involved wearing muslin hairnets in abattoirs.

As it turned out, much of this kangaroo meat, which was finding its way illegally into the human food chain, originated in the Northern Territory, where it was killed as pet food under conditions which were appropriate for that use but not for human consumption.

Somewhere between the Top End and Melbourne, this meat suffered an extraordinary transformation into top quality beef suitable for export. It was not easy to trace the route of the meat, but it was rather simpler to follow the money chain.

As well as identifying the way in which this phenomenon occurred, the Royal Commission also turned up a number of other instances in which meat inspectors, for a consideration in the form of free meat, cash payments or false overtime claims, had been turning a blind eye to undesirable practices, and unscrupulous operators in the industry had been making some additional money for themselves while putting at risk the whole of the Australian export trade.

We also discovered that, because the Northern Territory laws concerning the documentation and inspection of meat coming from other states were defective, the Territory was on occasions used as a dumping ground for poor quality meat which had once been of better quality but had deteriorated. This often resulted from long hauls in hot conditions. Meat could leave the Territory in good condition, be rejected on arrival in Sydney, and then sent back for sale in the Territory with nothing to indicate its history. No doubt that situation has been rectified.
Illegal slaughter, both by landowners and by trespassers, was also a problem in the Top End’s wide open spaces. It was hoped to reduce the temptation to kill illegally by the provision of inexpensive slaughterhouses designed for isolated areas. Improved refrigerated transport facilities were also expected to assist in the distribution of meat to remote places. I hope the risk of illness from unhygienic slaughtering has decreased.

Among my memories of my time in Darwin pursuing these inquiries was an early morning in the bush when I watched a buffalo being butchered. I had to admire the skill of the operators, but it was not really my idea of a pleasant outing.

When the Meat Industry Royal Commission finished, I took up for the first time the work of the Federal Court of Australia, to which I had been appointed while still Director General of Security when the Court was established in 1977.

Another event which had occurred during my absence was that I and seven other additional judges of the Northern Territory Supreme Court lost our commissions when the Court was reconstituted after the grant of independence to the Territory. Since the Court had been established under the Territory’s power rather than the judicial power of the Constitution, the action was no doubt valid, but it seemed a little discourteous that nobody told us what was happening either before or after the event.

One of the most popular tasks of the Federal Court was to sit as the appellate court on cases coming from the Northern Territory and, at least between May and October, there was always a glut of volunteers to sit in Darwin when the Court came here. I had my fair share of this work which included a number of very interesting cases. I wore the same old wig, but it was notionally different because it was worn in a different Court.

One of those appeal cases concerned the truck driver who, late one night, drove his vehicle into a crowded motel bar near Ayers Rock, killing five people. He had been thrown out of the bar some time before. Because it was uncertain whether he knew there were people in the bar at the time, a difficult question arose as to the distinction between murder by reckless conduct and manslaughter. The case eventually gave the High Court an opportunity to clarify the law on the subject. The accused, who had been convicted of murder at his first trial, had to be retried at great public expense, but he was again convicted of murder. This illustrates the care which the courts take over criminal trials, even when the accused has obviously been guilty of a heinous offence.

Another case which illustrates the care of the courts, this time for an Aboriginal accused, concerned an elderly tribal Aborigine who had used powers of superstition to have his way with a young woman of his community, not just once, but several times a day over a period of some
months – if his confession was to be believed. The question for the Full Court to decide was whether the confession should have been admitted in evidence, since the prisoner’s friend, who had been present during the interview in accordance with the so-called Anunga Rules, laid down for Territory courts by Forster J, had slept through most of it. The Court held that the choice of a friend was entirely up to the accused, and was intended for comfort rather than direct support, and so the confession was properly received.

Although he had been convicted at his trial, the elderly Aborigine had been released by the trial Judge, Forster C J, to return to his community. He would very likely have been unaware of the efforts on his behalf to clear his good name by expunging the conviction. Again, the cost to the public purse would have been considerable, but the case does serve to counterbalance other instances where it can be said that Aboriginal people have not received adequate consideration from Australian courts. Their legal services in the Northern Territory have an excellent record and have been well served by high quality lawyers.

It would not be appropriate for me to comment on the decision to remove appeals from the Federal Court and have them heard by a Full Court of the Territory Supreme Court, beyond saying that the judges of the Federal Court regret it, not least for selfish reasons.

As I bring this narrative to a close, it only remains for me to say how privileged I feel to have had the chance to see so many varied aspects of Territory life and play some short part in them. And I have not even mentioned the enjoyment I have had from, for example, joining the Administrator, the Honourable F C Chaney (as he then was) and Mr Justice Forster (as he then was) and others in playing volleyball in the Government House pool against Prince Bernhard of the Netherlands and his entourage. They were younger and fitter, but we beat them because we made up the rules and played cagily.

Another delight for me has been the birdlife of Darwin. When I am here, I regularly walk through the parks soon after dawn and, of the 54 species I have so far found, more than half have been new to me.

In fact, the only living things I do not like in the Top End are the sandflies, which always manage to give me a hard time.

There are no more beautiful scenes in Australia than the Arnhem Land escarpment, the sun setting over the MacDonnell Ranges, Mt Wedge in the early morning light or Learmonth Park near Docker River, let alone the better known Katherine Gorge, Uluru and the Olgas. When I put aside my wig, as I plan to do soon, I intend to buy an Akubra hat and spend more time in the bush. I look forward to visiting Kakadu and other Top End attractions as a simple but admiring tourist.

I am deeply grateful for all the opportunities, experiences and friendships the Territory has offered me; and I am glad to have this opportunity to acknowledge them.