

# WAKING UP TO DREAMTIME

The Illusion of Aboriginal Self-Determination



Dr Gary Johns, Professor Tom Flanagan,  
Trevor Satour, Steven Etherington, Dr Stephanie Jarrett,  
Helen McLaughlin, Professor Kenneth Maddock

**Edited by:** Dr Gary Johns

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**Front cover:**

The painting is by Aboriginal artist, Vanessa Fisher. She lives and works in Brisbane. Vanessa has been a major force behind the revival of Aboriginal visual and performing arts in Brisbane since the 1970s.

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# Introduction

For at least the last thirty years, money, programs and white advisers have engulfed Aboriginal people. Some Aborigines have survived the deluge. They have found a place in society that suits them. Some have not survived the deluge. They have been swept away by despair, grog and violence. Some have become leaders, and they have been looking for followers. They are seeking to build a new Aboriginal society, fully 200 years after the modern world came to this continent. They see their future in promoting a separate Aboriginal identity. The trouble is, many of their troops have moved on. They have moved into the Australian society. They regard their identity as a matter for themselves, not something that comes in a government program or in an Aboriginal politician's speech.

Each generation creates a new policy fashion, and each fashion brings a new problem. The Aboriginal leaders from the 1930s to the 1950s wanted equality, their children won it, and then wanted something else, self-determination. They borrowed the clothes of post-colonial nations and began to parade themselves as leaders of 'peoples'. The whites went along with some of this, handing responsibility for programs to people whose hands were already full just coming to terms with the modern society and the prejudice that confronted them. Forcing Aborigines to manage government-funded programs was inviting trouble. Management and leadership positions became the prizes. The struggle for identity became the scramble for state sponsorship and for preferment. Those who managed to escape this game were the lucky ones.

The failures of Aboriginal policy have not been for a lack of trying, goodness knows the goodwill of the nation is with Aboriginal people. Unfortunately, those who see it as an opportunity to re-create their dreams of another world have captured the area. A new class of Aboriginal leader, well schooled in the ways of the liberal democratic society, has seized an opportunity to become great by using the wealth of the nation and the fear of their own people, to create a separate political entity.

Self-determination has masked a whole array of Aboriginal policies in the last thirty years, but the measure of success is always the same. Those who escape aspects of their past are the winners. Identity is a fine thing, so long as it does not prevent you from achieving what you want. A new world presents many opportunities, denying a child those opportunities for the sake of the solidarity of a people is a mistake.

Canada is held out as the way to proceed for indigenous people. In fact, it is absolutely the wrong road to travel, and Tom Flanagan shows why. Self-determination is the mantra in Australia and my essay seeks to point out its contradictions. Trevor Satour has real misgivings about telling Aboriginal people how to conduct themselves, he sees a new authoritarianism on the rise. In fact, it is being used in remote Australia to smother Aboriginal people, as Steven Etherington points out. Stephanie Jarrett proves that separate services run by and for Aboriginal people are leaving Aboriginal women at risk. Helen McLaughlin shows that while policy fashions come and go, a great deal goes on *despite* as much as *because* of them. Kenneth Maddock shows why the great desire to have Aborigines live by their own customary law is an experiment that will end in tears.

# Acknowledgements

My first foray into Aboriginal matters was as a high school student in the 1960s, verbally assaulted by a very angry young Aborigine who wanted to change the world for Aboriginal people. It was a most uncomfortable experience, but I hope he had some success. I never came close again until in 1990, as a Member of the House of Representatives, the Coronation Hill dispute was brought to my attention. Dr Ron Brunton lobbied me. With his advice, and after judging the facts, I believe I took a principled view on the issue. The Cabinet agreed, but unfortunately, the Prime Minister disagreed. Coronation Hill, the gold, platinum and palladium mine became a park. A result of environmental and Aboriginal myth-making and mischief-making. I thought it was a daft way to run a nation.

My interest in Aboriginal policy continued in my minor role in Native Title matters as Special Minister of State. It has continued, particularly in a paper I wrote with Ron Brunton on Aboriginal Reconciliation for the Institute of Public Affairs. It is still the only paper that seeks to evaluate rather than indulge Reconciliation.

In the last two years, Peter Howson, a former Minister for Aboriginal Affairs, invited me to speak at two conferences, sponsored by, among others, *Quadrant* magazine. Peter, Ray Evans, John Herron, also a former Minister for Aboriginal Affairs, Maroochy Barambah and others have come together out of concern for Aboriginal people, to form the Bennelong Society. Aboriginal people are squeezed by the good deeds of the white society that surrounds them, but told by their leaders they must continue to fight it, all the while demanding its benefits. We want them to join, not to fight.

Then came the opportunity to edit a book with a group of authors of great knowledge and good intent. People who are not comfortable with the orthodoxy of Aboriginal separatism. They see its terrible flaws. They see the damage it is doing to Aboriginal people. When the trajectory of Aboriginal policy was to encourage integration, it was good. It has now overshoot the mark and needs to be reined in. I hope that the essays from Tom Flanagan, Trevor Satour, Steven Etherington, Stephanie Jarrett, Helen McLaughlin and Kenneth Maddock help to convince you. Tragically, Kenneth Maddock has passed away since the first publication of the book. His great insights and wonderful calm manner are well remembered by those who remain. My thanks to all of these people, to Grant Watt, to Dr Chris Ulyatt for his great help in bringing it to life in electronic form and to *Quadrant* for agreeing to publish online.

Gary Johns  
Brisbane  
2012

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(updated to 2012)

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# Aboriginal Orthodoxy in Canada

**Tom Flanagan**

Australia and Canada are about as similar as any two countries can be. Both have a medium-sized population spread over an enormous land mass and are governed by parliamentary democracies organised on a federal basis. Both share a political history as British colonies, self-governing Dominions, and members of the Commonwealth. And both face similar challenges in reconciling a small but persistent aboriginal population with a much larger immigrant population of European and (increasingly) Asian origin.

Given these similarities, Australian readers may find interest in an overview of the Canadian experience. Those wanting more detail may wish to consult my book *First Nations? Second Thoughts*<sup>1</sup> as well as another book published at the same time by the distinguished political scientist Alan Cairns, entitled *Citizens Plus: Aboriginal Peoples and the Canadian State*<sup>2</sup>. Professor Cairns and I disagree on many points, but we are both relatively critical of the current conventional wisdom, which in my book I call the ‘aboriginal orthodoxy.’

To get a sense of the practical results of the aboriginal orthodoxy, consider the following examples culled from events of the last 25 years:

- The annual federal expenditure on Indians is about \$6.5 billion (more than \$10,000 per capita).
- In 2000, the Squamish Nation (about 2000 people) in British Columbia received \$92.5 million as compensation for ‘historical injustice.’ The alleged injustice was that the federal government did not stop the BC government from relocating the Squamish reserve 100 years ago. The Squamish surrendered no land rights and continue to maintain their claim for aboriginal rights and title.
- The cost of the Nisga’a Treaty approved in 2000 is conservatively estimated at \$500 million (for about 6,000 people). Between 50 and 80 similar agreements will be needed to complete the treaty process in British Columbia.
- A trial hearing commenced in 2000 as the Samson Cree Nation sued the federal government for alleged mismanagement of oil and gas resources and revenues. The damages requested amounted to \$1.4 billion. The Samson Cree Nation is the richest Indian band in Canada and has trust funds of over \$400 million.
- In 2000, the Indian Claims Commission ruled that aboriginal title to Boblo Island, a 200-acre island in the Detroit River, had never been extinguished. It found technical defects in two land-surrender agreements executed in 1786 and 1790. The value of compensation is to be determined through further rounds of negotiations with the Walpole Island First Nation.



- In 2000, the British Columbia Supreme Court prevented the Tulsequah gold mining project from proceeding because the four-year-long environmental assessment allegedly did not pay sufficient attention to a possible aboriginal claim in the area. The estimated value of the investment, if the mine had proceeded, was \$240 million.
- In 1999, the new territory of Nunavut was created for 25,000 people (85 per cent Inuit) living on 1,900,000 square kilometers. The federal subsidy required to make the territorial government viable is about \$600 million a year (\$24,000 per capita). Less than 10 per cent of public revenue is raised from local sources.
- In 1999, the Supreme Court of Canada ruled that Indians in the Atlantic provinces have a treaty right to fish for a 'moderate livelihood.' The federal government set aside \$160 million to buy licenses and equip Indian lobster-fishing boats.
- In 1998, the federal government set aside \$23.4 million to buy farmland in southwestern Ontario to create a reserve for the 'Caldwell First Nation.' The latter embraces people who claim their ancestors were missed in a treaty signed in the 1790s. They have been living as ordinary Canadians for over 200 years but now want to become registered Indians.
- In 1997, the Minister of Indian Affairs apologised for residential schools and announced a \$350 million 'healing fund.' This gesture accelerated the avalanche of lawsuits (now more than 7000). Churches and religious orders are faced with bankruptcy.
- In 1996, the Royal Commission on Aboriginal Affairs issued a five-volume report calling for a 'nation to nation' model of governance. The cost of the Commission was \$54 million.
- In 1994, opposition from Cree Indians, who had earlier signed the James Bay agreement, caused Quebec to cancel phase two of the Great Whale hydroelectric project. The foregone investment was estimated at \$7 billion. The environmental study alone cost \$256 million.
- In the early 1990s, an Indian band, pursuing a dispute over the boundary of its reserve, blockaded a road from Penticton, British Columbia, to the Apex ski resort. Apex went bankrupt. Estimated loss: \$7 million.
- In 1990, dispute over the boundaries of a reserve near Oka, Quebec, caused the Mohawks to blockade the near-by Kanasatake reserve for 78 days. A provincial policeman was killed and Canadian troops were deployed. Sympathisers on the Kahnawake reserve blocked a major commuter bridge into Montreal.
- In 1977, the Berger Inquiry recommended a ten-year moratorium on a proposal for a Mackenzie Valley pipeline to bring northern gas to market. The pipeline was never built. The economic loss cannot be calculated precisely but is certainly in the billions of dollars.

## Historical Background

A little historical background is essential for understanding how we have come to this state of affairs in Canada.

It has been estimated that, when European explorers first came to what is now Canada, it was inhabited by about 500,000 aboriginal people. All parts of Canada, even very inhospitable areas, were inhabited, suggesting that aboriginal peoples had expanded as far as their level of technology and social organisation permitted. There were, to be sure, considerable differences among these aboriginal peoples. The Pacific coast was inhabited by tribes whose exploitation of the rich salmon fishery had enabled them to develop complex institutions of government and property, including slavery. The nomadic tribes of the western plains depended mainly on the buffalo hunt, which they often carried out in large groups following huge herds of bison. The Indians who dwelled in the northern forests—most of Canada—also practiced hunting but in a more solitary fashion, pursuing not buffalo, but deer, moose, beaver, and other forest animals, while the Inuit of the far north hunted caribou and marine animals. Finally, the inhabitants of the lower Great Lakes and St. Lawrence Valley had begun to practice slash-and-burn agriculture, though they also still depended heavily on hunting and fishing.

In spite of these important differences, the aboriginal inhabitants of Canada were all similar in that they were several thousand years behind the civilisations of Europe, Asia, Mexico, or Peru. They had no permanent agriculture; no metallurgy (except for the working of elemental copper); no stone architecture; no large cities; no formalised government that could be called a state; and no advanced symbolic systems such as writing, mathematics, calendars, and musical notation. Although they could be courageous and tenacious in warfare, they were unable over the long term to resist the incursions of European nations into North America.

The first colonial power, France, was mainly interested in the fur trade, so French agricultural settlement was restricted to the St. Lawrence Valley and a few areas on the Atlantic coast. Although the Indians of eastern Canada passed nominally under French sovereignty, they continued to live much as they always had, with two great exceptions: they reoriented their activities to the fur trade, and they were repeatedly pulled into colonial wars between the French and English. A few tribes settled down under the tutelage of missionaries after warfare and disease decimated their numbers.

When the French ceded their numbers to the English in the Treaty of Paris (1763), the English took the view that the French had effectively extinguished any Indian title to the land in what is now Quebec and the Atlantic provinces. The English, however, hoped to preserve the territories further west as a land reserved for Indians. By the Royal Proclamation of 1763, therefore, the Crown forbade the colonists to acquire land from the Indians except through official purchase.

The Proclamation was one of the main causes of the American Revolution because the colonists resented Britain's attempt to block their westward movement. The Revolution, in turn, led to the first major migration of English-speaking settlers into Canada as those who supported

Britain during the Revolution were driven out and had to seek refuge to the north. After 1781, therefore, the British colonial authorities embarked upon a program of acquiring the Indian title in order to make land available for settlement. Between 1781 and 1850, the authorities entered into a series of formal land-surrender agreements—later to be known as treaties—with the various tribes of southern Ontario. The Indians received money for surrendering their title to the land, and the Crown set aside land reserves for those who wished to settle down and pursue agriculture. Settlers from America and the United Kingdom also poured into Quebec and the Atlantic provinces, and the Crown also set aside reserves for Indians there so they would have some land for their own use. However, no formal agreements were signed because the authorities considered that the Indian title had been previously extinguished by the French regime.

It is in this period—the first half of the nineteenth century—that we can speak of the emergence of an Indian policy with three main features—protection, civilisation, and assimilation. Protection was the first imperative because it was feared that Canadian Indians, threatened by European diseases as well as the shock of confronting a more advanced civilisation, might die off completely like the Indians of the Caribbean region. The reserves were meant to be enclaves where Indian existence could be guaranteed. But they were also supposed to be places where the Indians would learn the arts of civilisation. The government sent Indian agents and agricultural instructors to teach the new way of life and encouraged Christian missionaries, both Protestant and Catholic, to preach the gospel and open schools. The government's assumption was that, once the civilising process had been completed, the aboriginal people would become 'enfranchised.' Rather than continuing to live a collective existence on reserves, enfranchised Indians were expected to take individual ownership of a portion of the reserve and become self-supporting farmers. According to the vision of civilisation and assimilation, they would at this point be educated Christians, able to read and write, to support themselves in a market economy, to vote and to hold public office—in a word, British subjects with the full civil and political rights of other Canadians.

In 1867, the old colony of Canada was divided into Ontario and Quebec and then united with New Brunswick and Nova Scotia to create the modern Dominion of Canada. The new Confederation quickly expanded by purchasing the enormous Hudson's Bay Company territories in 1870 and then persuading the western colony of British Columbia to join the Confederation in 1871. The Hudson's Bay Company territories were subsequently subdivided into the three new provinces of Manitoba, Saskatchewan, and Alberta, plus the Yukon and Northwest Territories, plus large additions to the older provinces of Ontario and Quebec.

Canada pursued its policy of signing land-surrender agreements in most of the Hudson's Bay Company territories. Between 1871 and 1921, by the eleven so-called Numbered Treaties, Canada acquired the Indian title in all of the three prairie provinces, all of northern Ontario, and the most densely inhabited part of the North-West Territories. However, no treaties were signed in northern Quebec, the Yukon, or the province of British Columbia. This failure to negotiate land-surrender agreements everywhere in the newly acquired territories set the stage for another, vastly more expensive round of treaty-making in our own day.

Regardless of whether or not treaties were negotiated, aboriginal policy was more or less the same across Canada. In the more remote northern areas, aboriginal peoples were left to live their traditional life, supporting themselves by hunting, fishing, and trapping, as long as conditions permitted. They were required to obey Canadian law, and after a certain point their children were required to attend school; but in other respects they lived much as they always had, except for receiving some public assistance in times of hardship. Further south, in the more densely inhabited parts of Canada, Indians were settled on reserves where they were to be protected, civilised, and ultimately assimilated. While living on reserves, they were subject to comprehensive legislation—the *Indian Act*—and control by the large bureaucracy of the Department of Indian Affairs. Matters continued in this vein until the late 1960s.

Did the policy succeed? As with most public policies, the answer is both Yes and No. Protection certainly did succeed. By the late 19<sup>th</sup> century, the aboriginal population had dropped as low as 100,000, and many observers thought total extinction was inevitable. But by the end of the 1960s, the number had reached about 300,000; and today there are about 660,000 officially registered Indians, 25,000 Inuit, and perhaps 300,000 mixed-race people (the precise number is impossible to ascertain). Overall, it is probably reasonable to speak of a million people who identify themselves as aboriginal—about three per cent of the Canadian population.

I would also argue that civilisation succeeded. Although native spiritual traditions still exist and have undergone something of a revival, most aboriginal people converted to Christianity. Indeed, they may be the most devoutly Christian element in an increasingly secularised Canadian population. Almost all aboriginal people have attended school and are literate in English (a much smaller number in French). They own personal property, have bank accounts, and engage in market transactions. They are employed in a broad range of occupations, from traditional pursuits such as hunter and trapper to modern vocations such as teacher, social worker, and lawyer. They vote in elections, run for public office, and receive important governmental appointments such as judge and senator. They wear the same clothes and eat the same foods as other Canadians; watch the same movies and television shows; listen to the same music (particularly Country and Western); and play the same sports—hockey in the winter and softball in the summer.

Assimilation, however, has occurred only to a limited extent. Only a very small number of Indians ever chose the legal path of enfranchisement. A larger number lost their Indian status through intermarriage, but most Indians by far are still tied to their reserve communities. More than 40 per cent live off reserve, but most of these have not made a permanent move to urban life. They may stay in the city for a while; but unlike other urban migrants in Canada, they often move back to where they were born. The reserve system, which was originally intended to be a transitional device promoting assimilation, has become instead a permanent focus of separate identity. In one sense, this is not surprising. Just as you cannot make friends with others by ignoring them, you cannot assimilate people by requiring them to live in restricted areas. Yet I doubt there was any realistic alternative to the reserve system in the nineteenth century if the goal of protection was to be meaningfully pursued; without it, aboriginal people would probably have disappeared altogether as an identifiable part of the Canadian population.

The modern period of aboriginal policy in Canada began with the election of Pierre Trudeau's Liberal government in 1968. Pursuing an ambitious agenda of social reform under the slogan of the 'Just Society,' Trudeau wanted to accelerate the assimilation or integration of natives into Canadian society. Such intentions were in line with the American civil rights movement that dominated the thinking of the day, and they were also a logical extension of the Canadian government's traditional policy goal of enfranchisement. But when Trudeau's government issued its famous 'White Paper' in 1969, proposing policies to promote integration, there was a terrific backlash from aboriginal peoples and their white supporters. The government retracted the White Paper, and since then the pendulum of policy has swung wildly away from assimilation and integration towards aboriginal nationalism.

Although Canadian developments have their own internal causes, they are part of a larger trend affecting the whole world. Everywhere in the last thirty years indigenous peoples have been asserting separate identities and demanding special rights, ranging from measures of affirmative action in employment to recognition of national status. In that perspective, aboriginal demands in Canada are very similar to those made by Indians in the United States, Maori in New Zealand, and Aboriginals in Australia. Indigenous politics, in turn, is part of the flowering of 'micro-nationalism,' as some authors call it—the assertion of identity by ethno-linguistic or racial minorities that once were thought to be part of the nation-state but now demand recognition as separate entities. Only a few homogenous nations—Iceland comes to mind—can hope to escape the politics of micro-nationalism.

I would identify six different aspects of these recent developments in Canada. They are, of course, interrelated with each other, but I will discuss them separately for purposes of clarity.

### **The Rebirth of Aboriginal Rights and Title**

In the Canadian legal system, aboriginal rights and title are the rights to land that flow from prior occupancy by aboriginal peoples. 'Aboriginal title' has recently been defined by the Supreme Court of Canada as a kind of ownership, whereas 'aboriginal rights' are lesser claims such as the rights to hunt, fish, and gather the wild produce of the land. The traditional view of the Canadian government was that aboriginal rights and title were extinguished when land-surrender treaties were signed. Such treaties were signed in parts of Canada between 1781 and 1921—Ontario, the three prairie provinces, and part of the Northwest Territories. The government's 1969 White Paper proposed that there would be no further treaties, that aboriginal rights in those parts of Canada without treaties would be considered extinguished through the history of adverse occupancy sanctioned by the Canadian government.

The reaction against the White Paper led to a new round of treaty-making. Since 1975, modern land-surrender agreements have been signed in northern Quebec, the Northwest Territories, and the Yukon. Some of the sub-agreements have not yet been finalised, but broadly speaking the process can be said to be successful in certain respects. It has been expensive, and some conflicts remain; but it has brought a degree of clarity to property rights in these parts of the country, making possible some huge economic developments, such as the James Bay hydroelectric project and the new diamond mines in the Northwest.

Clarity about property rights may not be a permanent achievement, however. Native leaders are increasingly rejecting the notion that any treaty, whether old or new, brings about a final assignment of property rights. They see treaties more as open-ended agreements to share the land. No matter what these treaties say on the printed page, the reality is that native leaders will claim that they have not in fact surrendered their aboriginal rights and title to the land, that they are in effect continuing co-owners of all the land, not just of the specific parts reserved to them by treaty.

Another factor helping the modern treaty-making process to succeed up to this point is that Canada's north is almost a *tabula rasa*. The white population is small, Indians and Inuit are not settled on reserves, and property rights were largely unassigned before the treaties. Now, however, we are moving into a new phase—treaty-making in the provinces—where such favourable conditions do not apply. In the current battleground of British Columbia, there is a large white population, Indians have lived on reserves for over a century, and the entire province is either owned outright in fee simple or is encumbered with tenures such as mining and timber leases. In such circumstances, treaty-making is hugely expensive and fraught with political conflict. One treaty—the Nisga'a's agreement—has been concluded in British Columbia, but the outlook for the other 50 to 80 treaties that supposedly need to be signed is not encouraging. The Nisga'a treaty cost \$500 million dollars for about 6000 people. At that rate, completing the treaty process in British Columbia will cost at least \$10 billion—maybe more, since there is a ratchet effect that tends to make the terms of each treaty a minimum for the next. The Liberal Party of British Columbia, which came to power in May 2001, opposed the Nisga'a treaty and seems unlikely to push the treaty process forward as vigorously as did the New Democrat provincial government that it replaced. Meanwhile, the Supreme Court of Canada raised both expectations and anxiety with its 1997 *Delgamuukw* decision, in which it held that the absence of treaties means that aboriginal rights and title have never been extinguished in British Columbia. This decision cast a pall of uncertainty over land titles in the province and is proving to be a substantial deterrent to investment in mining and forestry projects.

Land-surrender agreements were never signed in southern Quebec or in the Atlantic provinces because the British thought the government of France had already extinguished aboriginal rights and title in these former French colonies. Actually, there were some British treaties in the 18<sup>th</sup> century, but they were treaties of peace and submission that said little or nothing about land rights. The issues have not yet been fully litigated, but it is quite possible that the Supreme Court will eventually extend the *Delgamuukw* decision to Quebec and Atlantic Canada, thus creating further uncertainty about land titles that had been assumed to be secure for more than two hundred years.

## **Reinterpretation of Treaties**

In addition to the movement to negotiate new treaties, there is also a drive to reinterpret existing ones. Partly this is a matter of negotiation. Under headings such as 'renovation' or 'modernisation', federal and provincial governments have offered to enrich many of the existing treaties. Saskatchewan has gone the furthest by offering hundreds of millions of dollars to enable Indian bands to purchase land to enlarge their reserves.

More, however, is happening through litigation than negotiation. In dozens of cases across the country, aboriginal litigants are attempting to persuade the courts to adopt novel readings of treaties. This usually involves arguments to the effect that treaties should be interpreted not simply as written, but in the light of an alleged aboriginal understanding found in historical documents or, increasingly, in oral traditions. The most dramatic development in this area took place in 1999, when the Supreme Court held in the *Marshall* decision that a 1761 Nova Scotia treaty of submission afforded the Micmac and Maliseet Indians the right to draw a 'moderate livelihood' from fishing. The treaty says nothing at all about fishing rights, but the Court based its ruling on an alleged oral understanding that the Indians would have had. The ruling touched off an outbreak of racial violence on the coast as Indian fishermen started taking lobsters out of season and white fishermen retaliated by burning their boats. The federal government has tried to buy peace by appropriating \$160 million to buy up the licenses of white fishermen and purchase boats and nets for Indian fishermen in their place. Needless to say, concern for economic efficiency is absent from this scenario, in which tax money is being used to replace experienced fishermen with inexperienced fishermen, solely on racial grounds.

Similar cases are now arising that could jeopardise the future of the oil and gas, mining, and forestry industries of the resource-rich western provinces. I personally am involved as an expert witness in two cases in Alberta in which the aboriginal plaintiffs are claiming in effect to have a veto right over all economic-development projects on their 'traditional lands,' even though they surrendered their rights to these lands by treaties more than a century ago. Their argument is based on an ingenious construction of treaty language, but even more on an appeal to so-called oral traditions about what the treaties really meant. If they are successful in these cases, provincial control of public lands will become almost meaningless, and no one will be able to run a seismic line, cut a block of timber, or dig a mine without first getting the permission of whichever Indian bands are in the vicinity. Companies may proceed with their projects by paying to do whatever has to be done, but it will raise the cost of doing business and lower the general standard of living.

## Judicial Policy-Making

Judicial decisions have a great deal to do with the negotiation of new treaties as well as with the reinterpretation of existing treaties. To some extent, this would have been inevitable in Canada because since 1867 we have had a federal system in which the courts are the final interpreters of the written constitution. But Canadian politicians enormously heightened the influence of the courts when they adopted a large package of constitutional amendments in 1982. According to Section 35 of these amendments, 'The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.' This wording is vague in the extreme; it says nothing about what these aboriginal and treaty rights are, only that they exist and, by virtue of being mentioned in the constitution, are entrenched in the law beyond the power of legislatures to amend or overturn.

Since 1982, judges have been emboldened to fill in the blank space, to lay down their own view of what aboriginal and treaty rights are. Increasingly, they draw their inspiration not from legal precedents in the British common law tradition but from novel theories generated in law

schools and published in academic journals. Once adopted in court decisions, these theories become in effect part of the constitution without ever having been ratified by legislators chosen by the people. Canada dealt decisively with its fiscal deficit in the 1990s, but it is building up a 'democratic deficit,' in which a tiny minority of the population is able to use the courts to circumvent the normal political process. The courts are now considering hundreds of cases involving aboriginal and treaty rights—indeed thousands of cases if we count the residential school claims, which are discussed in the next section. The sheer volume of these cases threatens to take policy-making out of the hands of elected representatives and put it into the hands of a small cadre of judges, lawyers, law professors, and expert witnesses. I happen to make quite a bit of money working as an expert witness for the Crown in these cases, but I believe that this flood of litigation is detrimental to democracy. There are steps that the government could take to reassert control of the agenda, but up till now it has been paralysed by the fear of criticism of 'taking away rights,' even though these are rights that had no existence before the latest legal theory conjured them into existence.

### **Compensation for 'Historical Injustice'**

Over the last three hundred years, there has been an enormous volume of transactions between aboriginal peoples, on the one hand, and French, British, and Canadian authorities, on the other hand. Researchers for aboriginal peoples are now going over this history with microscopic care, looking for anything that can be described as unjust according to contemporary standards of fairness. Needless to say, this anachronistic application of contemporary standards to the decisions of the past produces an infinite number of claims of unjust treatment.

One large category of claims involves the administration of Indian reserves. Over the years many reserves were relocated or underwent changes of boundaries. Sometimes the residents agreed to sell or exchange parts of their reserves; sometimes government acted unilaterally in pursuit of other purposes, such as locating military installations or promoting economic development for the larger society. All such decisions are now under intense scrutiny, and hundreds of millions of dollars of compensation are being paid every year to successful claims. Some claims lead to negotiation, some end up in the courts, and some go to a special tribunal known as the Indian Claims Commission. This latter body has only the power to recommend, not to decide; but the Liberal government has pledged to replace it with another body equipped with the power to render binding decisions, perhaps up to a limit such as \$5 million per claimants.

Another category of claims involves groups of aboriginal people who claim to have been missed when treaties were signed or reserves were being assigned. One striking instance is the so-called 'Caldwell Nation' of southwestern Ontario, a group of a few hundred people whose ancestors have been living as ordinary Canadians for more than two hundred years but who have convinced the federal government that they should now get a reserve. The government has appropriated \$24 million to buy up some rich Ontario farmland, but the project has been stalled by local opposition. There are numerous other such cases across the country.

Then there are claims about deprivation of specific treaty benefits other than land. In another case in which I am involved as an expert witness, the plaintiffs argue, among many other



things, that they did not get the right number of farm implements and livestock in the 1870s when their reserves were being established. Even if this claim is true, is it really in anyone's interest to be arguing about such matters 120 years later? Litigation of this type encourages an obsession with what the American author Thomas Sowell calls 'intergenerational group abstractions' at the expense of future self-improvement in the lives of real human beings.

A different, and now extremely important, category of claims has arisen out of attempts to provide education for aboriginal people. Until the 1980s, a large number of aboriginal people, though by no means a majority, attended residential schools funded by the federal government but run by Protestant and Catholic missionaries. The graduates of these schools now form a major portion of the leadership cadre of aboriginal people across the country. During the 1990s, claims that sexual and physical abuse were rife in the schools started to come to the fore. In 1997, the government of Canada issued an apology and appropriated \$350 million as a so-called 'healing fund,' not to be distributed among those who attended the schools but to pay for programs for counselling and community improvement. Despite this gesture, more than 7000 individual claims for compensation have now been filed in court, and the number is increasing every day. One well-known lawyer in particular dropped all his other business and started to recruit these claims by the batch, until he was stopped by his provincial law society. Fewer than 10 per cent of the claims involve charges of physical or sexual abuse; the vast majority involve charges such as 'cultural genocide,' loss of language, and so on. Churches are also named as defendants in these actions, and the Oblates, the premier Roman Catholic missionary order in Canadian history, are on the verge of declaring bankruptcy, as is the national organisation of the Anglican Church. One Anglican diocese has already been forced into insolvency.

I have no idea how this particular story is going to end, but I am convinced that it will provide little lasting benefit to anyone except to the lawyers feasting on the fees. It may transfer some money to some aboriginal people, but it also encourages them to see the problems in their own lives as the result of the actions of others rather than as challenges for them to overcome by their own initiative. The damage to the self-reliance of aboriginal people will, in my view, far outweigh the value of any possible settlement.

## **Aboriginal Self-Government**

Self-government has also been a major theme in the last thirty years of aboriginal politics. At the level of public administration, this has entailed a great change in the way Indian reserves are run. Under the old system, all administrative authority was lodged with the Indian Agent, who was an appointed federal civil servant, while the elected band chief and council were merely advisory. Now the office of Indian Agent has been abolished, and the chief and council are responsible for running most programs on the reserve. More than 80 per cent of federal grants from the Department of Indian Affairs go to band governments to be spent with relatively loose supervision and reporting requirements.

The good news in this story is that Indians are now taking a much larger role in administering their local affairs, in everything from schools to policing. They are no longer simply passive recipients of federally administered services. The bad news is that the move to self-government

has fostered a peculiar kind of politics that I call 'familistic factionalism.' On the typical reserve, the population is small and family ties are all-important. The band government is the *de facto* owner of all land, housing, and natural resources on the reserve; is the only large employer; and runs the schools and social welfare services. All of this is paid for almost entirely by federal subsidies because reserves do not tax themselves to provide local services. Under these circumstances, politics inevitably becomes a contest of kin groups to take over the band government and steer the benefits toward the friends and family of the winning faction.

Almost every day, Canadian newspapers publish stories about waste and corruption on Indian reserves. Patronage and nepotism flourish; standards of fiscal accountability are lax; large deficits are common; and federal oversight is weak. Some steps are being taken to impose administrative discipline, and the Minister of Indian Affairs has announced his intention to introduce corrective legislation; but I believe the problems will remain intractable until the residents of reserves are required to tax themselves to support the services they desire. Once they have the feeling that their own money is being spent, they may have some incentive to demand better performance from the chiefs and band councils they elect.

Beyond the local level, there is now a welter of tribal, regional, and provincial organisations, capped by a national organisation, the Assembly of First Nations. Most are supported by tax dollars; the AFN, for example, receives core funding from Ottawa of about \$20 million a year, which enables it to maintain the largest, best funded office of all lobbies in the capital city.

There has also been a strong push to entrench aboriginal self-government in the constitution. In this context, three phrases that one hears frequently are 'the inherent right of aboriginal self-government,' the 'third order of government,' and 'treaty federalism.'

By 'inherent right,' aboriginal advocates mean that they derive their governing powers not from the Canadian constitution but from their previous existence as autonomous political communities. The United States operates on this theory, but there it is understood that Congress is the sovereign lawmaker and can limit Indian governments in any way it chooses. Canadian advocates do not accept this limitation and point to the 1982 constitutional amendment as having entrenched their sovereign powers beyond the power of Parliament to override or abridge.

The 'third order of government' means that aboriginal governments should be regarded as equal partners in the Canadian federal system, along with the ten provincial governments and the federal government. In this theory, each of the three orders of government would have its own prerogatives entrenched in the constitution. The more visionary proposals call for a separate aboriginal house of parliament, aboriginal seats on the Supreme Court, and an aboriginal veto over constitutional amendments.

The concept of 'treaty federalism' carries this line of thought a step further by arguing that aboriginal governments participate in the federal system through voluntary treaties, just as sovereign nations relate to each other in the international sphere. In this perspective, aboriginal communities can presumably withdraw from the federal system, just as nations can abrogate treaties.

Underlying all of this is the theory that Indians constitute nations. Prior to about 1980, Indians were generally referred to as tribes or bands, but in the early 1980s a new terminology began to take hold. Indians began to refer themselves as nations, indeed 'First Nations.' Each of the 633 Indian bands in Canada is now referred to as a First Nation. Both federal and provincial governments quickly adopted the usage, so that the phrase 'First Nations' is now almost *de rigueur* in public life. The word 'Indian,' even though it appeared in the constitutional amendments of 1982, is now politically incorrect and avoided by most people when they speak in public. It is close to becoming a racial epithet like wop, kike, or nigger.

Two things are implied in the First Nations terminology. First, that aboriginal communities constitute nations, not tribes or ethnic groups, and as such possess sovereignty and the right to self-government. That is precisely what the term nation means in modern political philosophy—a political community that is either actually or potentially self-governing. Second, that the aboriginal First Nations have special rights flowing from the fact that their ancestors lived in North America before the ancestors of other Canadians. Matthew Coon Come, who was elected National Chief of the Assembly of First Nations in 2000, epitomised this philosophy when he made two provocative statements. First, he said, 'I am not a Canadian.' Second, he said that all of Canada still belongs to the First Nations.

Mr. Coon Come's comments show how the nation-to-nation view of aboriginal affairs could lead to the break-up of the nation-state. If aboriginal people are not Canadian citizens, and if as First Nations they enjoy an ownership of the land that they can never surrender, what remains of Canada as a sovereign nation-state? Canada in this tableau is merely 'the goose that lays the golden eggs,' a convenient source of transfer payments to maintain a high standard of living for tax-free aboriginal people.

## **The Aboriginal Economy**

The expense of meeting aboriginal demands is large and rapidly growing. Canada, however, is a wealthy and generous country, and its citizens would willingly pay large amounts of money to enable aboriginal people to become prosperous and self-supporting. The sad truth, however, is that the enormously expensive programs of the last thirty years have not ended aboriginal poverty; in fact, they may have made it worse rather than better. The increased flow of money to reserves has encouraged Indians to remain in remote, rural communities where there is little prospect of economic development. About 40 per cent of Indians living on reserves depend on welfare payments, and that percentage rises above 80 per cent in many remote locations. While living on the reserve, Indians may get free housing, medical care and education, but they are also trapped in communities with little economic future.

The response of aboriginal leaders is that they are poor because they are dependent. In their view, what they need is control over large amounts of land and natural resources, together with money to develop them without interference by the Canadian government. In their perspective, the aboriginal emphasis on self-government and land claims is logical, because together they will provide the control over resources necessary to promote prosperity.

In my view, however, the aboriginal economic strategy is built on an outdated, collectivist view of the economy. Individual prosperity in a modern economy does not arise primarily from exercising control over land and resources but from offering goods and services that other people want to buy. In countries with a high standard of living, most people own very little in the way of land and natural resources except perhaps the land on which their house is built. The typical way of becoming self-supporting and prosperous is to sell one's time, the value of which is enhanced by education, vocational training, and work experience, in the marketplace—precisely the strategy which Karl Marx condemned as wage slavery. Aboriginal peoples as collectivities can control enormous amounts of land and natural resources and yet their people will remain poor as individuals unless they acquire skills that can be sold in the marketplace.

The Canadian experience is quite enlightening on this issue. The vast expenditures of the last thirty years, combined with many land claim settlements, have enriched an elite among aboriginal people—the political leaders, the lawyers who handle the negotiations and the litigation, and the professional people who work with them. These are the people who manage the cash flow that accompanies government programs and who steer that cash flow to benefit themselves and their supporters, ensuring that the well-paid jobs, the lucrative contracts, and the unmonitored expense accounts go to their friends and relatives.

Aggregate statistics show some improvement in the average income and material well-being of aboriginal people in Canada, but this improvement is largely concentrated among the elite. At the same time as members of the aboriginal elite are doing very well for themselves, aboriginal poverty and associated social pathologies remain acute and perhaps even growing. Welfare dependency is higher than ever, as is illegitimacy. About half of aboriginal children are born to single mothers and grow up without a father, and their chances of ending up either on welfare or in prison are frighteningly high.

In short, Canada's recent history of aboriginal policy confirms the general experience of mankind. Individual property rights and open markets bring prosperity and social independence for the largest possible number of people. Collective property rights and government control bring poverty and dependency even as they enrich the small elite that manages the system. The paradox of Canada is that, while individual property and open markets have worked well for our people as a whole, we continue to encourage aboriginal people to travel in collectivist directions that produce more poverty, despair, and political conflict.

## **Conclusions**

I cannot presume to offer advice to Australian readers. I can, however, state some conclusions that I have drawn from studying and living through the Canadian experience:

1. Always pay close attention to the most radical spokespeople and thinkers of the aboriginal movement. The so-called 'moderates' are likely to be either confused or deceptive. The statements of the radicals provide the best guide to where the movement is likely to go over time.

2. Be wary of 'salami tactics.' Do not sign an agreement or support a policy just to buy peace if you cannot endorse the underlying principles. Today's bad agreement or policy will become a precedent for tomorrow's worse one.
3. Avoid putting vague statements of principle in the constitution. All it does is to empower the lawyers. To be honest, no one in the world knows exactly how to go about reconciling indigenous peoples with modern societies. Putting things in the constitution limits the legal flexibility required for experimentation.
4. Businesses in Canada have succeeded by cultivating good relationships on the ground with local aboriginal communities. This means giving people jobs and contracts in the pursuit of mutually profitable objectives, not throwing money at people or handing over bribes.
5. While cultivating good local relationships with indigenous peoples, business should not lose sight of its vital long-term interest in a general policy framework that promotes private property rights and open markets. Business needs to support market-oriented think tanks, research projects, and political movements.
6. A sense of guilt over the colonial past should not prevent advocating the principles of individual freedom, legal equality, private property, and open markets. These principles are of benefit to all human beings, not just white men of European ancestry. No one needs their benefit more than aboriginal people, who were rigidly controlled in the past by government bureaucrats and are controlled today by their own leaders, who enjoy the financial support of the government.

### **Chapter notes:**

- 1 Flanagan, T. 2000. Montreal: McGill-Queen's University Press.
- 2 Cairns, A. 2000. Vancouver: University of British Columbia Press.

# The Poverty of Aboriginal Self-Determination

Gary Johns

Are they to be a minority living an artificial pampered and separate life, not supported by their own participation in what all other Australians are doing but by the bounty of those who earn the national income ... is it intended that their separate development ... become virtually a nation within a nation. That seems to me to be a dangerous absurdity ... that is abominably racist thinking. Sir Paul Hasluck<sup>1</sup>

On the 23 August 1988, the House of Representatives affirmed, 'the entitlement of Aboriginal and Torres Strait Islanders to self-management and self-determination subject to the Constitution and the laws of the Commonwealth of Australia.' The Opposition moved, but failed to add the words, 'in common with all other Australians.'<sup>2</sup> It appears that self-determination for Aboriginal people is different to that of other citizens. How this difference is expressed is not straightforward, there is no single or simple definition, rather it has developed in institutional and program form, as well as in the aspirations of Aboriginal leaders.<sup>3</sup> As far as the aspirations are concerned, Aboriginal self-determination appears to consist of self-determination 'within the life of the nation.' While any claim to sovereignty is abandoned, Aborigines seek a similar standard of living to that of other Australians, without losing cultural identity. They seek this by community self-governance, which could be as extensive as a 'separate order of governance',<sup>4</sup> in which Aboriginal government forms another layer of the federation, and is funded from a 'fixed level of Commonwealth revenue.'<sup>5</sup> The development of commercial activities on indigenous-owned land will be important, although for some, economic independence will be defined in terms of traditional economy and lifestyle. Aborigines will also seek a treaty with other Australians, through which unresolved issues of reconciliation could be resolved. As far as these aspirations are concerned, self-determination may be characterised as collective, separatist and with elements of pre-modernism.

In terms of programs and institutions, self-determination appears to consist of rebuilding an indigenous land base, improving access to housing, health and justice through Aboriginal-controlled organisations, as well as mainstream services and developing and promoting local, regional and national Aboriginal political infrastructure. It also involves encouraging participation in the economy through education, training programs, indigenous businesses and income support. As far as these programs and institutions are concerned self-determination may be characterised as collective—but with some individual focus—and separatist—but with some integration—and accepting modernisation.

At the outset, any consideration of Aboriginal self-determination in Australia needs to acknowledge that the concept contains competing objectives. It also needs to acknowledge that there are forces affecting indigenous people far more powerful than any aspirations their leaders may express. Most Aboriginal people do not live on traditional land, most are partnered to non-Aboriginal people, most speak English as their first language. The context

for the collective, separatist and pre-modern elements of self-determination, the orthodox view of self-determination, finds its origins in the recent revival of an Aboriginal identity, of which one of Australia's most distinguished anthropologists, Ronald Berndt observed, 30 years ago:

many people of Aboriginal descent have deliberately attempted to exploit their own position by enhancing the Aboriginal side of their descent at the expense of, and in contrast to, any other (e.g. European) ... Alternatively, Aboriginality is sought in an Aboriginal past. Not in the reality of traditional Aboriginal life, contemporary or otherwise, but in their idea of what it was (or is) like. Not in a reversion to Aboriginal socio-cultural behaviour and belief, but in a re-creation of what they think Aboriginal life should be, without even discarding the crust of what they are (Australians). A great deal of interesting myth making is going on.<sup>6</sup>

Present re-creations of aboriginal life are even more artificial, even more remote from their origins than in Berndt's time. The orthodoxy of self-determination is a political re-creation, a re-construction of Aboriginal society to suit new Aboriginal leaders. It suffers from massive and fatal contradictions.

### **The Contradictions of Self –Determination**

Aboriginal people do not suffer simply from the legacy of dispossession, they suffer because they are ruled by policies devised within the orthodoxy of Aboriginal self-determination. Judging from the elements of Aboriginal self-determination in the list of aspirations, the orthodoxy regards a collective Aboriginal identity, Aboriginal-controlled public services, Aboriginal-owned land, companies and Aboriginal political institutions as essential to Aboriginal freedom. It also regards the dominant society as the source of all Aboriginal problems, and that separation from it, the source of all solutions. A fundamental consideration is whether separation is possible when indigenous people patently need and seek the protection and wealth of the dominant society.

Which provides the best protection for Aboriginal people, traditional society or the modern state? Will the present external threats to the liberal democracies posed by terrorists cause Aboriginal people to seek the protection of the state that supposedly represses them? In an earlier period of instability, confrontation in Indonesia in the 1960s, Aboriginals had no qualms in seeking the protection of the state from external threat. At Bagot Settlement in Darwin it was reported, '[m]embers of the group explained that they can go anywhere they wish in Australia, but that this might be curtailed if a foreign power took over.'<sup>7</sup> Is there any doubt Aboriginal people will continue to seek the protection of the state in the future? Similarly, each time something within Aboriginal society is identified as requiring attention—a recent issue is family violence—intervention by the dominant society is deemed necessary. Furthermore, the measure of acceptable behaviour is, and in a self-assured enlightened society, of necessity must be that of the dominant society. The principal contradiction of self-determination is that it can only be guaranteed by the state from which self-determination is sought. A second contradiction is the requirement that the state intervene to protect the human rights of its citizens.

A further contradiction is the apparent necessity to collectivise Aboriginal people in order to achieve individual self-determination. This results from transferring public resources to Aboriginal intermediaries. Many resources—land, housing, health, legal services and local employment—are accessed through group membership. As a result, some Aboriginals lack the freedom to develop and dispose of their own resources. Moreover, the small size and close-knit nature of many Aboriginal communities makes them vulnerable to the intense localism of Aboriginal politics.<sup>8</sup> It can lead to an Aboriginal council being ‘captured’ by a particular family group or faction, to the exclusion of others.<sup>9</sup> What are the dangers for an individual member of an indigenous community who is reliant on the goodwill of the other members of the group? When moneys are collected on behalf of Aboriginal people on the Community Development Employment Program, is everyone treated fairly? When moneys are sought for state housing, is the allocation based on need? Do people have equal access to health and legal services, when these services are prizes to be won in local Aboriginal politics? The small-scale collective form of political organisation, precisely the scale and mode of much of Aboriginal society, is highly romanticised. Can it deliver what Aboriginal people want? One of the great achievements of the welfare state is to base entitlement on need, not on political favours. Enlightened objectivity is rarely achieved under conditions where resources are granted rather than earned and where receipt of entitlements is dependent on factors closely aligned to the political position of the potential recipient. Aboriginal politics mimics an earlier phase of democratic-welfare-state politics, the politics of grace and favour, of cronyism. The livelihood of Aborigines in these circumstances is prone to local political dynamics, and local politics becomes very personal. As Aboriginal magistrate Pat O’Shane remarked of Victoria, but with Australia-wide implications, ‘Aboriginal politics ... have been vicious and I mean vicious for very many decades.’<sup>10</sup>

The assertion of difference as an aspect of self-determination means that indigenous people would like to have it known that they were the original settlers of the Australian continent, and that their land was stolen. In order to satisfy this assertion, Australia should pay compensation to its original settlers. Unfortunately, those who were dispossessed no longer exist and the difficulties of inter-generational compensation are legion. Any attempt to maintain elements of pre-modern culture—a significant element of ‘difference’—inconsistent with earning a living in the modern world is a matter that cannot be solved by compensation. Aboriginal leaders meet such talk with fierce resistance, original settler status cannot be removed by means of compensation, the loss of ‘a culture’ is immeasurable. It could be argued<sup>11</sup> that the key difference between Aboriginal and European people is that Europeans were the beneficiaries of scientific and technological innovation. The two peoples, indigenous and modern, are, or at least were at some point, entirely substitutable, but for their exposure to and embrace of, the modern world. Once the modern world is embraced, the claims to difference collapse to the recognition of heritage and past misdeeds. Recognition is important, but it does not provide the basis for the ongoing relationship between indigenous and non-indigenous Australians. An on-going claim to difference, when a substantial basis of the difference—the embrace of innovation—collapses, is a farce. The human rights model much admired by Aboriginal activists may assist in making claims against the state, ‘It can hardly assist in claims against modernity.’<sup>12</sup>



The pre-conditions for Aboriginal self-determination—strategic, cultural and economic—are weak, except in one respect, the degree of funding afforded to it by the state. The publicly funded façade masks the fact that little else in Aboriginal life is ‘self-determined’. Orthodox Aboriginal self-determination is artificial. The aspirations of indigenous leaders and their supporters, the institutions and programs which carry them, and the new proposals, each face considerable practical and conceptual limitations. Limitations so serious, that they are fatal to the orthodox concept of self-determination. It is likely that indigenous self-determination in Australia will be determined by factors far more powerful than the prevailing orthodoxy, including the internal contradictions of the orthodoxy:

1. *The contradictions between equality and separateness in internal self-determination:* self-determination of a ‘people’ within a sovereign state is limited by the conflict between collective rights expressed in the desire for separateness and individual rights, where the state has an obligation to provide equally for its citizens. The difficulty is to decide those things that are in the common domain and those things that are in the separate domain.
2. *The viability of a collective identity:* self-determination is limited by the small scale and dispersed nature of indigenous settlement. It is also undermined by the extent of indigenous integration by means of urbanisation, language and intermarriage. The poor turnout for indigenous elections, and the fact that there is no national non-funded Aboriginal voice, suggests the artificial nature of the separatist agenda.
3. *The compatibility of a pre-modern civilisation and a modern world:* The desire to preserve aspects of a pre-modern culture and economy may limit the ability of indigenous people to engage in a modern society. Where traditional cultures produce poverty, can those who seek to maintain such a culture expect the benefits of a wealth-producing culture?

### **Internal Self-Determination**

The claims of indigenous people are not the same as those of colonial peoples. Self-determination in the sense in which the United Nations and its constituent states use it applies when post-colonial states are free of their old masters. This includes being free to fall into ruins, as have many African states. Indigenous people are not so free. The nation-state, which keeps many of them, has a responsibility for their welfare, as it does for all citizens. The major limitation of Aboriginal self-determination is that it is self-determination within a state, so called internal self-determination. There is no international recognition of internal self-determination. There is no legal basis for the concept, other than that which, with the consent of the people, a nation-state chooses to grant. Although the United Nations Working Group on Indigenous Populations anticipates the adoption of a United Nations declaration on the Rights of Indigenous Peoples by 2005, such adoption will have no binding status whatsoever. [On December 20, 2006, the General Assembly deferred adoption ‘to allow time for further consideration’.]

The overall picture of the international legal regime is that groups living in sovereign states are protected only against the most extreme of measures, genocide. Otherwise they are only

ensured the right to maintain their identity, that is to survive as a group. It does not ensure a group's expansion or development.<sup>13</sup> The Director of the Norwegian Institute of Human Rights and a long-time member of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities sees the difficulty of internal self-determination as, seeking equality in the common domain and accepting diversity in the separate domain. 'Whenever pluralist arrangements are contemplated, they must be limited in such a way as not to prevent the state from ensuring, without discrimination, the enjoyment of human rights to everyone under its jurisdiction.'<sup>14</sup> How this goal is best achieved when so much of private life is now in the common domain, including husband and wife relationships, age restrictions on marriage, the universal education of children, the test for unemployment beneficiaries and so on, is difficult to know. The very trend to the universality of standards of behaviour, as championed by the human rights agenda, makes it less likely that standards of behaviour in a minority will be able to be lower, or different, than for the majority. As Frank Brennan cautions, 'the difficulty of setting limits to collective rights would arise between the rights of an individual who wants to be treated like any other Australian (e.g. not being forced into a traditional marriage or initiation process or not being banished from home, family, 'country' or kin without due process) and the entitlement of the community to order its own affairs according to customary law so as to maintain and preserve the culture and the old way of doing things whatever the sensibilities of councils for civil liberties and departments of family services.'<sup>15</sup>

It is highly unlikely that a minority can 'reserve for itself preferential access in certain areas (employment, land, property) and at the same time require equal access in the larger society.'<sup>16</sup> When minorities run their own institutions, schools, hospitals or when they seek to hold onto some parts of their culture, numerous problems of discrimination can arise. For example, a fundamental element of traditional indigenous education is the restriction on the dissemination of knowledge. It is claimed that, '[t]he access routes to information and knowledge are tightly controlled and even a simple request such as 'Where is so-and-so?' must be asked only of someone who has a right to speak about the person being sought.'<sup>17</sup> Any attempt to preserve such restrictions in the face of a world that is driven by the open dissemination of information, such as is the norm in the dominant society, is tantamount to crippling the future of indigenous students subject to such an educational regime. The same can be argued in teaching indigenous language. Although the desire to preserve an indigenous language is noble, the fact that so few people speak any of the indigenous languages in Australia<sup>18</sup> means that anyone who communicates in that language, to the exclusion of communicating in English, is doomed to exist in a tiny world of the language group. This is a very severe penalty for preserving a language. The state may not be prepared to allow its citizens to suffer in this way.

A recent review of indigenous education in the Northern Territory found that 'indigenous educational outcomes are deteriorating from an already low base.'<sup>19</sup> While 82 per cent of non-indigenous urban students achieved a national reading benchmark in 1998 at year three levels, only 6 per cent of non-urban indigenous students achieved the same benchmark. Fifty four per cent of indigenous students in urban schools achieved the benchmark. 'With such inadequate skills in literacy and numeracy indigenous people while able to engage effectively in their own world, are limited in their engagement with the world outside.'<sup>20</sup> A major cause

of this outcome was a decline in school attendance of indigenous children. While indigenous enrolments have climbed from 72 per cent of the indigenous population to 77 per cent in the period 1983-1998, attendance has declined from 76 per cent to 68 per cent.<sup>21</sup> Non-attendance is caused by population mobility, including improved roads, transportation and disposable income and 'greater access to traditional country as people move toward re-establishing as far as possible old land occupation patterns.'<sup>22</sup> Poor health is also cited as a cause of poor educational outcomes.<sup>23</sup> For example, rural indigenous students frequently experience malnutrition, and deafness through ear disease. To 'solve' indigenous underachievement caused by mobility and health problems, the Report recommends that schools incorporate some elements of health intervention, and track the movement of the children and their families. In effect, run around after them. These policies are a refusal to recognise the contradictory nature of the desire on the part of indigenes to live in a manner inconsistent with their being able to cope with life in the dominant society.

The major recommendation of the Report is to have indigenous people 'own' their children's education in the ways of the dominant society. Nowhere is there an explicit recognition that the desire of indigenous people to continue to live in their own world is anathema to their participation in the wider world, or that the state has an obligation for the children to succeed in that wider world. The reviews accumulate, each trying to leave the orthodoxy of self-determination and separatism in place, each measuring the extent of failure in terms of the standards required by the dominant society. Nowhere is it stated that something has to give, that the contradictions of internal self-determination are not just large, they are insurmountable and they are damaging indigenous Australians. The stress of transition for Aborigines, including the stress of self-determination is immense, it causes breakdown, it causes destructive behaviour. The signature ruin of public housing at Aboriginal settlements—houses destroyed by residents—is and has been obvious for a very long time.<sup>24</sup> What is not obvious is the infidelity of Aboriginal policy. The time has arrived when either, integration is made an explicit goal of policy, or if it is acceptable for indigenous people to choose to live separately, then the state will have to relinquish its responsibilities for them as citizens. Continuing to pay for an insurmountable contradiction is intellectually dishonest. Collin's desire to involve indigenous people in their children's education for the wider society is recognition that integration is the only acceptable solution. The review noted the desire of many indigenous parents to have their children succeed in a western education, this despite constant reference to indigenes having different 'cultural priorities.' It is to be hoped that the subtle approach of involving indigenous parents in their integration will succeed. The previous policy of encouraging them to be separate has almost destroyed their children.

Internal self-determination also runs into problems in the recognition of customary law. The common argument of the orthodoxy is to complain about the non-recognition of customary law, without exploring what it is.<sup>25</sup> The recognition of customary law does not free the state from the obligation of protecting Aborigines from customary law. 'The recognition of autonomous institutions will create a capacity for indigenous people to oppress one another. In particular, a potential for the group itself to mistreat some of its individual members. This should not be regarded as an internal affair of the group, any more than abuses of human rights by states are regarded as their internal affairs.'<sup>26</sup>

Ideally, existing law can accommodate different customs without breaching the principle of equal treatment or lowering the standard of protection available to individuals. However, it is very difficult to achieve in practice. For example, the traditional practice of Kupai Omasker, the giving of children to extended family members and close friends is widespread throughout Torres Strait Island society. Anthropologists originally used the word 'adoption' to describe the Pacific custom of a permanent transfer of a child from one extended family member to another. This term was applied to differentiate permanent care from temporary arrangements where children are likely to be returned to their original parents, but it does not describe the custom from a Torres Strait Islander perspective. The Family Court of Australia has recently recognised the practice of permanent adoption. The recognition came about because Kupai Omasker had no legal standing and was creating difficulties for children adopted under Torres Strait lore. These children have birth certificates with names different from that of their families, which is difficult in a culture that usually treats adoption as secret. Traditionally adopted children legally retain their birth names—unlike the official name change that occurs with mainstream adoption—so young Islanders can be shocked to discover they have a different name to their 'parents' when they try to obtain a driver's licence, get married, apply for welfare or attend a family funeral. Difficulties can also occur with inheritance, claims on family land and identity on passports and other official documents.

Despite the fact that it is directly contrary to the prevailing view that adopted children should have the right to know their biological parents, the Family Court<sup>27</sup> has complied with the custom of keeping such identity secret in the case of Islanders. A recent case<sup>28</sup> in the Court concerned a dispute between a mother who sought the custody of her child from her mother (the grandmother) to whom the child had been given, on a permanent basis, for adoption. The applicant, an Islander argued the custom did not extend to permanent adoption, only temporary, if long-term, adoption. The tendency will be for indigenes to have different memories of their customs, or more likely to seek the custom, and the legal forum, that suits them. Customs do not exist free of the circumstances in which they develop, so Kupai Omasker may have had a real purpose at a time when obligations between people had a large impact on their future. Such obligations may be weakened where other sources of sustenance are available. As recently reported, Islanders not only give children to childless couples as an act of 'caring and sharing', but believe a childless woman given a baby is likely to conceive. 'People never fought over custody. A child is a gift from God. So it's bad karma to haggle. Now it's a bit different. With social security, some mothers want the kids back to get more money.'<sup>29</sup> How can the rights of Islander children to know their biological parents be refused when fellow citizens have such a right? The Family Court recognition of Kupai Omasker is a victory for one group, but a loss for another. It is a fashionable, but not necessarily responsible act of self-determination.

### **The Viability of a Collective Identity**

Why, in Aboriginal society is so much apparently decided communally?<sup>30</sup> Perhaps it is because so many decisions concern the distribution of public goods and services. The communal nature of Aboriginal society is as much a result of their collectivisation under protective regimes—the missions—and the convenience of the welfare state as any tribal arrangements. Decisions

made about matters that directly affect relatives or neighbours are extremely difficult. No one else is expected to operate in this way. In the wider community, professionals, knowing nothing of a claimant's family or clan obligations, make decisions on access to benefits. This is the great strength of the system. Establishing the limits to the power of the group over the individual is something at which the dominant community is very experienced. The 'grouping together' of Aborigines is an essential element of orthodox self-determination, in particular, self-government. 'It is not difficult to imagine self-government on some of the large tracts of Aboriginal owned land with predominantly Aboriginal populations. Also, regional government where Aboriginal people form the great majority of the permanent population.'<sup>31</sup> Yet the business of organising political representation and the administration of programs for Aborigines has not proved easy. As Charles Perkins pointed out, there are nearly 2,000 Aboriginal organisations in Australia, some of which 'live for themselves alone'. More strikingly, he remarked, 'there is no national organisation since the demise of the Federal Council for the Advancement of Aboriginal and Torres Strait Islanders in the 1970s. There is an urgent need to establish an effective, independent, non-government sponsored national ATSI organisation.'<sup>32</sup>

Judging the viability of a collective is difficult, indeed, 'just as an individual should not be forcibly held inside a group, so a group should not be broken up into a number of individuals while it still had cohesion as a group.'<sup>33</sup> To some extent, individuals will make the judgement. Aboriginal activist, Marcia Langton exulted in an observation, that in 2010 there would be one million self-identified indigenous people in Australia.<sup>34</sup> At present, there are fewer than 350,000. She said, 'whereas, presently, most Australians are able to dismiss Aboriginal demands for justice as the complaints of a miniscule minority, their children will not be able to so avoid the problem.'<sup>35</sup> Langton's casting the net of Aboriginal self-determination around all of those of Aboriginal descent is presumptuous. She could well have chosen any number of ethnicities. For example, some 70 per cent of Australians are of Anglo-Celtic origin<sup>36</sup> but as a measure of political expression, those people split evenly in their support for the major political parties. It may be that because their ethnic origin forms the base of the dominant culture they have no need to assert their ethnicity. Nevertheless, neither are there political parties in Australia based on the ethnicity of minorities. The fact is, that in Australia, identifying the ethnicity in one's background has little to do with the expression of political demands.

If large numbers of Australians with an Aboriginal heritage were to agitate in pursuit of some common objective, for example, the political separation implied in Langton's assertion, this action may be justified. As it is, based on the numbers and aspects of the identity of Aborigines, such separation appears unsustainable. Those growing number of people who identify their Aboriginal heritage are increasingly married to those of other ethnic origins. The proportion of indigenous couples, whether married or de facto, composed of intermixed parties has increased from 46 per cent in 1986 to 51 per cent in 1991 and 64 per cent in 1996.<sup>37</sup> Furthermore, the movement of indigenous people to the urban areas and the fact that intermix is greater among these people suggests that intermix will increase. Finally, there is a higher rate of intermix among females under 45 than over 45, and younger women marrying out at a higher rate than the earlier generation implies a continuing trend towards intermix. It could be argued that indigenous identity will not be diminished by the extent of intermix,

but in the context that Aborigines are in a tiny minority—surely the intermix does not imply the Aboriginalisation of Australia—the hopes among indigenous leaders for ethnic political solidarity and increased political power rest on weak grounds indeed.

Weaker still is the expression of political will. For the 1999 Aboriginal and Torres Strait Islander Council elections, the turnout among indigenous voters, expressed as a percentage of voting-age population, was 23 per cent. The highest turnout was in Cooktown, 74 per cent and the lowest in Sydney, 6 per cent.<sup>38</sup> The regions with the highest turnout are sparsely settled remote areas in northern and central Australia, where indigenous people constitute larger proportions of smaller local populations and often live in discrete communities. The southern metropolitan and more densely settled rural regions consistently show the lowest voter turnout. One explanation for the turnout is instructive:

ATSIC figure prominently in the lives of Indigenous people in remote areas, particularly those in discrete Indigenous communities. ATSIC is often the major source of funding for basic infrastructure services and for housing and employment in these communities. By contrast, in southern more densely settled areas where Indigenous people are a much smaller proportion of a much larger total population and live much more intermingled with non-indigenous Australians, ATSIC is a small organisational player ... It is not surprising, then, that many Indigenous people in these latter areas take a lesser interest in the ATSIC electoral process, while still choosing to identify as Indigenous in the census.<sup>39</sup>

The explanation fails to mention that the vast majority of indigenous people live outside remote or exclusively indigenous communities. The bulk of indigenes live in the large metropolitan centres of Sydney and Brisbane, and in the larger regional centres.<sup>40</sup> The driver of Aboriginal political consciousness is most likely access to public largesse. The orthodox solution to the 'problem' of Aboriginal consciousness is to have more Aborigines dependent on Aboriginal-controlled resources.

In the context of the argument of self-government of indigenous people, the size of a community, and the proportion of a community that is indigenous, is important to a consideration of political autonomy and administrative efficiency.

Prospects for community self-governance are highly limited because of the pattern of settlement. Those that are highly indigenous are tiny.<sup>41</sup> Those that are not cannot expect to rule based on race, lest they disenfranchise other residents.<sup>42</sup> The much-heralded creation of the Canadian Territory of Nunavut in 1999 was based on a population of 25,000 in a contiguous (though vast) area in which 85 per cent of the population was indigenous. A free vote of the residents of Nunavut was bound to produce a Nunavut controlled legislature. The areas where Aborigines constitute a clear majority are non-contiguous. They are scattered across the northern part of Australia. To create the most favourable electoral boundaries for a region with an indigenous majority in Australia one either has to create very small units, or gerrymander the boundaries to avoid the larger European settlements—Darwin and Cairns—and create areas with no community of interest.

As a general schema, Aboriginal administration is based on land councils.<sup>43</sup> For example, the NSW system contains regional as well as local land councils. Boundaries are not specifically based on affinities to land. The councils take on the role more akin to a club, than a government. Nevertheless, they are an important point of reference for some Aboriginal people. Land councils in remote regions, especially in the north of Western Australia and Queensland and much of the Northern Territory have a closer affinity between land and specific groups of Aborigines. These types of land councils are highly organised to pursue, in addition to land issues, a whole range of indigenous issues. Nevertheless, they do not constitute a level of government. In Queensland, and in one instance in Western Australia,<sup>44</sup> there are Aboriginal and Islander Councils. In these cases, self-government is a term that has some validity in the widest sense. Their role and performance are an important indication of the prospects for collective self-determination.

There are 33 Aboriginal and Island Councils and they are generally located in remote parts of Queensland. The Councils were established to undertake local government functions such as water and sewerage, garbage collections and community policing. In addition, the councils are asked to take on a much wider role, 'taking in almost every aspect of the functioning of their communities.'<sup>45</sup> For example, councils operate in the areas of welfare, housing, employment (CDEP and training), health and justice. They run services such as, aged persons homes, respite centres and youth activities as well as emergency aid to residents because of sickness or death. Indigenous police are appointed by the council for the area and are charged with maintaining peace and good order. There is an Aboriginal or Torres Strait Islander Court in each area. These courts are constituted by two justices of the peace both of whom must be indigenous residents of the community, or failing that, members of the community council.<sup>46</sup> Councils own the majority of the houses in the communities and rent these to community residents at weekly rent as low as \$20. Council, funded by government grants, builds and maintains the houses. The rents are generally based on income or the age and condition of the house. A large proportion of the community workforce is employed by the Council under the CDEP, which provides employment for between two and four days per week. Revenue sources on communities vary and may include a takeaway shop, beer canteen, guesthouse, airport-landing fees, post office and bank agency. All funds raised by the Councils are used for community development and service provision.

In Queensland where the experience of Aboriginal local government councils is greatest, the compliance problems are serious. 'As at May 2001, an audit opinion could be issued for only two of ten controlled entities of Aboriginal Councils for the financial year ending 30 June. In addition, the audit of the seven controlled entities of Cherbourg Aboriginal Council have not been able to be completed for 1998-99 financial year.' Further, 'only 13 (42 per cent) of Aboriginal Councils and Islander Councils that had finalised their financial statements by 31 May 2001 achieved an unqualified audit opinion for 1999-2000 ... None of the entities qualified in 1998-99 were able to improve to unqualified status in 1999-2000, and ... the performance of eight (26 per cent) entities that have completed financial statements has deteriorated from an unqualified audit opinion in 1998-99 to a qualified opinion in 1999-2000.'<sup>47</sup> Other serious concerns were that Councils were 'using their grant funding for other than approved purposes', that there 'was a high value of debts owed to some Councils by

both current and former Councillors' and that a significant number of Council enterprises (43 per cent) were running at a net loss.<sup>48</sup> In addition, there were a number of instances of allegations of misappropriation and fraud<sup>49</sup> and the use of Council funds to pay for the funerals of elders.<sup>50</sup> Similar concerns were expressed in the Northern Territory in 2001 where 42 Community Government Councils and Associations failed to lodge their annual financial statements by the date specified.<sup>51</sup>

Aboriginal self-government is in a bind. Its boosters wonder whether there is a case for forms of indigenous self-government in Australia at a level above that of community self-government.<sup>52</sup> This search recognises that the small scale of Aboriginal organisation is inimical to fair decision-making. In the context of the constant difficulties indigenous governments have in complying with the requirements of financial accountability, the following is the response. 'The sharing that is a fundamental part of Indigenous culture represents a finely calibrated social contract that imbues both generosity and responsibility in society members. It is vital that there is scope for such values to be incorporated into governance structures if an Indigenous community desires it. Non-Indigenous bureaucratic requirements should not impede this.'<sup>53</sup> Such a policy comes close to abandoning the state responsibility to Aborigines. It also acknowledges that a wider Aboriginal consciousness may not exist. The difficulty is that as the scale of organisation increases, the proportion of Aborigines covered by a region declines, as does the level of participation. A recent review of council constitutions seeks a new set of rules more appropriate to the wide brief of the councils and the different concept of democratic practice in indigenous communities. For example, the review<sup>54</sup> suggests the design of a council may need to incorporate elders, traditional owners, those with an historical association, social groupings such as tribes, clans, language groups, skin groups, male and female, and families. While there are experiments with less democratic forms of government, and while there are suggestions that Aboriginal councils should not have to play by the same rules of financial transparency as others, until those entities raise their own funds it is an imposition to ask the taxpayer to spend their money without the usual acquittals. Unfortunately, the problems of Aboriginal administration at the local level are considerable. Designing electoral systems along 'traditional' lines again comes close to the state abandoning Aboriginal people.

That government is the major source of funding, indeed of income and employment, for indigenous people is another cause for concern. Indigenous people are constrained by a lack of choice in so many matters. They operate collectively, in supposed solidarity with their own people, but do not express it politically. Indeed, in the majority of their circumstances, they abandon the political expression of solidarity. It is not so much the case that Aborigines identify as such, but take little part in the politics. Rather, it is that when asked about their heritage they respond, but such identification has for them little or no importance for their livelihood or well being. Only in the artificial confines of remote indigenous communities does Aboriginal political organisation have any relevance. The relevance arises not from the free expression of a political will, but in the necessity to compete for the only real source of wealth, the government funds, which are accessed by political leaders. Such funds, indeed such leaders, would become redundant if indigenous people were to become self-sufficient.<sup>55</sup> Furthermore, indigenous people are involved in the political institutions of the dominant society<sup>56</sup> to an extent that



suggests no impediment to the advancement of indigenous aspirations, save those that seek difference for the sake of ownership and control. The prospects for their self-sufficiency are clearly greatest in non-Aboriginal dominated areas. The conclusion is overwhelming, remove indigenous dependence on government and indigenous politics would collapse. The prospects for removing dependence rest in escaping remote locations.

## **Compatibility Problems**

How much of indigenous culture remains and how much of what remains is compatible with the production of a satisfactory life for indigenous Australians is a serious problem for the orthodox self-determinists. From the beginning, indigenous society had real problems with modernisation:

Why did Australia not develop metal tools, writing, and politically complex societies? A major reason is that Aborigines remained hunter-gatherers, whereas ... those developments arose elsewhere only in populous and economically specialized societies of food producers. In addition, Australia's aridity, infertility and climatic unpredictability limited its hunter-gatherer population to only a few hundred thousand people. Compared with the tens of millions of people in ancient China or Mesoamerica, that meant that Australia had far fewer potential inventors, and far fewer societies to experiment with adopting innovations. Nor were its several hundred thousand people organized into closely interacting societies.<sup>57</sup>

Those who argue that the sovereignty of indigenous people, based either on prior ownership, or on differentiation through race or culture refuse to acknowledge the immense gulf between the life of the indigenous and the life of the modern.<sup>58</sup> Even if one cannot bring oneself to say that the latter is better than the former,<sup>59</sup> it is impossible to ignore the implications of the impact of modernisation on traditional societies. It destroys their reason for being. 'The social organization of Australian Aborigines, as investigated and described by early anthropologists, had been eroded even in 'tribal' communities so, that while it prescribed what an Aboriginal should or should not do in some situations it had ceased to govern his actions in many other situations and could not ensure conformity to its rules and customs.'<sup>60</sup> This sentiment is not to abandon the important role played by culture as an agent of transition. 'We should see Aboriginal culture, not as something standing in the Aborigines road—to be broken down as quickly as possible to make way for the new—but as something which even now sustains him; which has moulded him and given him the qualities that have enabled him to cushion some of the impact of our intrusion, maintaining a measure of his dignity, along with a desire to enter into some kind of meaningful relationship with us.'<sup>61</sup> Indeed, Aborigines have made their own decisions to abandon old practices. In the late 1960s Arnhem Aborigines 'came from six communities on the north coast, and agreed upon the basic elements of the traditional culture that they would try to hold—namely, their myths, songs, dances, bark painting, some aspects of the marriage rules compatible with Australian-European norms, and the Maraiin religious system. Aspects which they consider should be disregarded were mainly polygamy, betrothal arrangements, and the use of violence.'<sup>62</sup>

Whatever the pre-eminence given to the preservation of culture, the fact remains that if not one shot had been fired in the European settlement of Australia, if not one massacre had taken place, if disease had not taken a single person, Aboriginal people would have become strangers in their own land. The primitive, pre-modern, technologically naive, closed, geographically limited Aboriginal society would not have survived. Moreover, the conditions that make possible its re-creation are just as damaging. The modern political organisation and access to information necessary for the present class of leaders to operate, destroys the old authority that depended on a closed information loop. The new language, necessary to communicate the solidarity of indigenous people, destroys the need for the old languages. The availability of science destroys the need for much belief in myth. The availability of material wealth destroys every aspect of the previous economy, and the social organisation based on those practices.

Are the cultural traits, like kinship obligations, inimical to the achievement of the standard of living which, in the name of equality, Aboriginal leaders demand of the dominant society? In the administration of Aboriginal land, there is conflict between the rights of traditional owners and land councils. In evidence quoted in the Review of the Aboriginal Land Rights (NT) Act 1976, Pastor Paul Albrecht stated:

For senior Pmarakurtwia and Kurtungurla ... [traditional law] is not a law which has lapsed. For them it has continuing validity and force ... The direct and unfettered possession of the title deeds to a particular 'country' is fundamental to Aboriginal principles of land ownership and land management. It is also the bedrock on which Aboriginal authority is grounded. This authority in turn is fundamental to the social cohesion and the social well being of the patrilineal descent group, to clan leadership, and to peace between the various patrilineal descent groups. The Land Rights Act ... has sabotaged ... the whole traditional system.<sup>63</sup>

In this instance a new Aboriginal land right has overwhelmed a traditional right. Societies that profess to be based on a pre-modern culture may be doomed to their own modernisation, not just that of the dominant state. Self-determination is not just an expression of difference, its prospects decline if it cannot sustain its people. Pre-modern cultures tend to produce poverty, they are unlikely to sustain their population in the manner they may aspire when they observe the modern world.

The independence of the settlers of Norfolk Island and their political self-determination are often quoted as a model for indigenous Australia<sup>64</sup> The Norfolk Island Government controls its own budget and raises revenue under its own system of laws. Generally, Commonwealth laws do not apply to Norfolk Island unless expressed to do so. Responsibility for most program delivery rests with the Norfolk Island Government.<sup>65</sup>

The degree of autonomy the Islanders have achieved is no doubt the envy of indigenous activists. Here is a population of just over 1700. What claim do they have to such autonomy? The answers are simple enough. They exist on an island, and they are relatively self-sufficient. Norfolk Islanders can afford to run their own government and provide their own services. Why would the Commonwealth want to treat them other than as a territory? Their borders

are well defined, and they are able to get on with life without a great deal of support. Tourism forms the basis of the Island's economy. Approximately 30,000 tourists visit the Territory each year. The Island has some advantages in this activity: its natural beauty, exotic location, low crime rates, low tax status and relative ease of access.<sup>66</sup> Most significant, and a matter rarely raised by aboriginal separatists, is that they raise revenue from their own people.<sup>67</sup> Further, the Norfolk Island Government operates its own social security system. Benefits are payable at levels around 80 per cent of those on the mainland. The Norfolk Island Government provides free infant, primary and secondary schooling on the Island.

Norfolk Island's estimated gross product per capita is 70 per cent above that of mainland Australia. Compared with mainland Australia, Norfolk has both a higher average per capita profit (142 per cent higher) and higher average per capita wages (5 per cent higher). This is consistent with its higher workforce participation rate (76 per cent compared to 64 per cent); higher proportion of the relevant population in full time employment (87 compared to 69 per cent); negligible unemployment; and possibly, longer working hours (many people seem to have more than one job).<sup>68</sup> One of the objectives of the Norfolk Island Government's Immigration Act is to prevent entry to persons who may not get employment on the Island. Moreover, people often leave the Island to pursue their education or to seek employment.<sup>69</sup> The healthy economy gives the Norfolk Island Government a capacity to raise revenue.<sup>70</sup> For the three years ending 1995-96, the Norfolk Island Government operated at an average annual surplus of over \$850,000. Given its present range of revenue sources, Norfolk Island is most unlikely to be eligible for recurrent general revenue grants from the Commonwealth and the Island's financial dependence on the Commonwealth is comparatively low.

The ability of Norfolk Islanders to have a considerable measure of self-government as part of self-determination is based on a viable economy, both collective and individual. How do Aboriginal economies fare? A review of the CDEP program sums up the contradiction in much debate over the economic future of Aboriginal people. 'CDEP is the principal source of labour demand in some remote regions in which indigenous people chose to remain because it is their ancestral country. To leave their home 'country' merely for the sake of a job is an unattractive option for a people already resisting many pressures on their cultural survival.'<sup>71</sup> Moreover, '[t]here seems no doubt that most Indigenous people, whether urbanised or in remote locations, wish to maintain their distinct identity and cultural autonomy. How can this be reconciled in modern Australia with economic equality?' Indigenous economic marginality is based on, 'historical exclusion from the mainstream provisions of the Australian welfare state and associated legacies; structural factors such as population structure and location of residence; cultural factors such as differing priorities and absence of labour migration; and demand side such as discrimination.'<sup>72</sup> The tension experienced by some indigenous people between their cultural and their economic survival is of course only apparent when a choice between the two is available. If the state is not willing to support their economic survival then their choices will become far more urgent, the tension will be resolved. As it is, it remains a tension because the choices are being avoided. The CDEP program is used as both a social program, keeping people occupied, and as an economic program, with the pretence at economic development and training.

A detailed study of indigenous employment and income in the Northern Territory reinforces the conundrum of land rights and economic advancement. The study found that:

while it is true that some remote communities benefit from export-oriented activities such as mining, pastoral and tourism ventures, these are typically very localised, capital rather than labour intensive ... For most places, then, an import substitution model embracing activities such as construction and maintenance, retailing, transport, media, land restoration and management, recreation and horticulture, will continue to be most appropriate ... [But] there are real limits to the number of private sector jobs that could be generated in this way given the limited market size and lack of economies of scale in many places where indigenous people reside. Short of any sustained migration away from such localities for employment, which has not been evident to date, this suggests a continuing need for public subvention along with flexibility and realism in the drive for increased private sector involvement.<sup>73</sup>

In other words, there is a direct conflict between land rights, as an expression of separatism, and the prospects of individual Aborigines for advancement. Moreover, the primary reasons for the poor employment prospects of indigenous Territorians is poor education and remote location, 'residing in a rural area (in a community on Aboriginal freehold land, for example) has an adverse impact on Aboriginal Territorians' economic and social standing.' A key plank of the separatists' grievance, racial discrimination, is similarly dismissed, 'the impact of racial discrimination on the social and economic standing of Aboriginal Australians and of Aboriginal Territorians is not substantial.'<sup>74</sup>

The attempts to promote indigenous economic development are legion. Following in a long line of organisations that have managed indigenous commercial programs since 1969,<sup>75</sup> is an even longer list of current organisations and programs. These include the Commercial Development Corporation, the Business Funding Scheme, the Indigenous Business Incentive Program, the Housing Fund, the Land Fund, the Indigenous Land Corporation, and the Aboriginal Benefits Trust Account. The consolidation of these organisations into a new organisation known as Indigenous Business Australia may or may not prove useful. The test is whether any new organisation can extricate itself from indigenous politics, that is the overwhelming desire to divide the cake between regions and groups and to use need as the criteria for assistance. If the imperative were to help indigenous people to succeed in the modern world, the only objective would be to fund those programs with the greatest prospects of success. The unpalatable consequence would be that programs would be on non-traditional land and joint ventures with non-indigenous people.<sup>76</sup>

In fact, the economic development of indigenous people, although characterised as a conflict between 'socially and commercially oriented programmes',<sup>77</sup> is in effect, a denial of the imperatives of living in a modern commercial environment. This denial is at the heart of the continual 'failure' of indigenous programs. Some of the social, now more commonly termed cultural elements of indigenous life—'culture' is used as a stronger defence against change—are not in the realms of Community Service Obligations or of equality, they are inimical to development. A litany<sup>78</sup> of the failure to separate social and economic imperatives recalls

the following archetypical example. The Aboriginal Development Commission purchased pastoral properties, with the intention of running an economic business. However, the main community interest was acquisition for social and cultural purposes. Consequently, it purchased properties that 'were marginal in supporting a nuclear family experienced in pastoral management, let alone a whole community; and, later injections of funds for commercial operations were largely wasted in terms of commercial benefits.'<sup>79</sup>

An outcome of the negotiations between the Commonwealth government and indigenous leaders to establish the native title regime was to significantly boost the Aboriginal Land Fund, established in 1974.<sup>80</sup> By the year 2004, the Land Fund will be valued at approximately \$1.3 billion, an amount that is being progressively used to purchase land for Aboriginal people who cannot lay claim to native title. During the term of the first National Strategy, the Indigenous Land Corporation will place priority:

on acquiring land which helps address the many unmet land needs of dispossessed indigenous people. Acquiring land for as many dispossessed groups as is possible will have a priority over financing the broad commercial, economic, social and environmental development demands on indigenous-held land ... [specifically], it will give priority to acquiring land, which has cultural significance for indigenous peoples.<sup>81</sup>

These priorities are clear, to have as many indigenous people attach themselves to land for which they have an affinity, regardless of the prospects for the land's capacity to sustain them. The purchase of land for dispossessed Aborigines has been in process for nearly thirty years at the Commonwealth level. The prospects that those lands will be other than symbols of a lost society seem certain indeed. The strategy is not to assist Aboriginal people, not already sitting on their own land, to become self-sufficient, it is to make them separate and dependent. Here is a clear example of the separatist ideology at work, under the guise of the modernisation of Aboriginal people. Despite the apparent drive to promote indigenous involvement in the economy and to overcome the conflict between social and economic imperatives, one of the major programs in the commercial arena has explicitly opted for the 'cultural' over the economic development agenda. The agenda has opted for self-determination so long as it is synonymous with identity. It has opted for a model of self-sufficiency that results in collective poverty, and against self-sufficiency at a standard sought by indigenous leaders, but only achievable by continuing subsidy.

## **Conclusion**

The best prospects for Aboriginal self-determination lie in individual acts of self-determination, reconciled to the modern world. The contradictions of collective, internal self-determination, retaining elements of pre-modern culture are inimical to reasonable Aboriginal outcomes. The orthodoxy assumes Aboriginal salvation lies in identity and collective solutions. It places identity before all other considerations. The main reason for the 'culture' argument is that the other grounds for separateness; race, colour and an economic system are disappearing. It is difficult to sustain the argument of a different people and legislation cannot preserve a

culture. The orthodoxy suits a class of political activists. It does not suit their followers who exist only as a means of access to public funds.

At present, and despite the power of the Aboriginal orthodoxy, decisions being made by some Aboriginal people suggest the road to self-determination may not exist in collective action expressed in a formal and institutional separateness. Many Aboriginal people seek self-determination as individuals. For them, identity is a private matter. This is not to argue that their identity cannot be expressed through private association, as is the case for many other groups in the community. Nevertheless, if some insist that there should be different public rules and institutions for different people, it is a matter for the consent of the entire body politic. Consent is essential because separateness, of the kind sought by the orthodox, depends on the dominant society. Fortunately for Australian Aboriginal people, they live in a wealthy country. Most of the world's indigenous people live in poor and less liberal countries where consent, much less debate, is unthinkable.

The revival of Aboriginality demonstrates a pride and a determination to succeed in the face of past suppression and past maladaptions to the dominant community. However, the desire to build separate institutions is a retreat not an advance. As Hasluck said, 'Demanding 'rights' was a despairing cry of the defeated who did not believe that they could show that they were as good as the next man.'<sup>82</sup>

## Chapter notes

- 1 Hasluck, P. 1988, *Shades of Darkness: Aboriginal Affairs 1925-1965*. Carlton: Melbourne University Press, 145.
- 2 The author voted with the Government for the resolution and against the amendment.
- 3 As compiled from the following sources: The Final Report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament. 'Roadmap for Reconciliation', December, 2000. Senator Aden Ridgeway's speech on the Reconciliation Bill 2001 in the Senate on 5 April 2001. Dodson, E 1999. 'Until the Chains are Broken.' *The Fourth Vincent Lingiari Lecture*, 27 August 1999, Darwin. ATSIIC, *Recognition, Rights and Reform: Report to Government on Native Title Social Justice Measures*, Commonwealth of Australia 1995, paras 3.25-3.26.
- 4 The Australia Institute, 2000. 'Resourcing Indigenous Development and Self-Determination.' Prepared for the *ATSIIC National Policy Office, Strategic Development Team*.
- 5 Matthews, R. 1993. 'Towards Aboriginal Self-Development.' *CEDA Public Information Paper* No. 46.
- 6 Berndt R. 1971, ed. *A Question of Choice: An Australian Aboriginal Dilemma*. ANZ Association for the Advancement of Science Congress 1969, Adelaide. The University of Western Australia Press, xvii.
- 7 Milliken, E. 1971. 'Social Structures and the Problems of Northern Territory Aborigines.' In Berndt, 1971, 48.
- 8 Independent Commission Against Corruption *Report on Investigation into Aboriginal Land Councils in New South Wales: Corruption Prevention and Research Volume*. Independent Commission Against Corruption, Sydney NSW 1998, 14.
- 9 Netheim, G. 1997. 'Governance Bodies for Indigenous Peoples', Paper 7, *Australian Research Council Collaborative Research Project*, 35.
- 10 Pat O'Shane, ABC Lateline, 14 June 2001.
- 11 Diamond, J. 1998. *Guns, Germs and Steel*. London: Vintage, 407.

- 12 Hopgood, S. 2000. 'Reading the Small Print in Global Civil Society: The Inexorable Hegemony of the Liberal Self.' *Millennium Journal of international Studies*. 29(1): 1.
- 13 Cassese, A. 1995. *Self-determination of Peoples: A Legal Reappraisal*. Cambridge: Cambridge University Press, 315ff.
- 14 Eide, A. 1996 'Peaceful Group Accommodation as an Alternative to Secession in Sovereign States.' In Clark, D. and R. Williamson, eds. 1996. *Self-Determination: International Perspectives*. London: Macmillan Press, 101.
- 15 Brennan, F. 1994. 'Constitutional Possibilities for Self-Determination for Aboriginal and Torres Strait Islanders.' In Fletcher, C. ed. 1994. *Aboriginal Self-Determination in Australia*. Australian Institute of ATSI Studies, Report Series. Canberra: Aboriginal Studies Press, 95.
- 16 Eide, 1996, 100.
- 17 Coombs, H., M.M. Brandl and W. Snowdon, 1983. *A Certain Heritage: Programs for and by Aboriginal Families in Australia*. Centre for Resource and Environmental Studies, ANU Canberra, 90.
- 18 Only 13 per cent of Aboriginal people speak an Aboriginal language. The figures are as high as 57 per cent in remote regions. Of Australian Indigenous languages, Arrente, from Central Australia, had the largest number of speakers (3,759). This was followed by Dhuwal-Dhwala, from Eastern Arnhemland (3,600) and Walpiri, also from Central Australia (2,628). Australia, 1998. *Census of Population and Housing: Aboriginal and Torres Strait Islander People*. Australian Bureau of Statistics, 77.
- 19 Collins, R. 1999. *Learning Lessons: An Independent Review of Indigenous Education in the Northern Territory*, Northern Territory Government, 14.
- 20 Collins, 1999, 18.
- 21 Collins, 1999, 143.
- 22 Collins, 1999, 146.
- 23 Collins, 1999, 154.
- 24 Heppell, M. 1979. 'Past and Present Approaches and Future Trends in Aboriginal Housing.' In Heppell, M. ed. 1979. *A Black Reality*. Canberra: Australian Institute of Aboriginal Studies, 6.
- 25 Reynolds spends an entire chapter on the recognition of customary law. See Reynolds, 1996. *Aboriginal Sovereignty: Reflections on Race, State and Nation*. Sydney NSW: Allen and Unwin. Elsewhere he does acknowledge the dangers of 'unprotected' rule by indigenous customary law, by citing the Indian Civil Rights Act (US), which was designed in the 1960s to protect Indians from arbitrary tribal action.
- 26 Daes, E. 2000. 'Protection of the World's Indigenous Peoples and Human Rights.' In Symonides, J. ed. 2000. *Human Rights: Concepts and Standards*. UNESCO Publishing and Dartmouth: Ashgate, 309.
- 27 Family Court of Australia. April 2001. <http://www.familycourt.gov.au/forms/html/rearing.html>
- 28 The details are known to the author.
- 29 As reported in *The Sydney Morning Herald*, 25 March 2000.
- 30 By whatever means: senior people, white advisers, or a vote of the community.
- 31 ATSIC, 1999, An Analysis of the United Nations Draft Declaration on the Rights of Indigenous People. Part V A, Self-Determination. <http://www.atsic.gov.au/issues/international/draftdec/fivea>
- 32 Perkins, C. 1994. 'Self-Determination and Managing the Future.' In Fletcher, 1994, 42.
- 33 Hasluck, 1988, 120.
- 34 This estimate, if accurately quoted by Langton, is dubious as the demographer John Taylor had earlier noted, 'ABS experimental estimates for the Indigenous population in 2006 range from 469,000 to 650,000.' Taylor, J. 2000. 'Transformations of the Indigenous Population: Recent and Future Trends.' Centre for Aboriginal Economic Policy Research, ANU, *Discussion Paper* 194. Summary, 1.
- 35 21 May 2001, ABC Radio National. <http://www.abc.net.au/rn/deakin/stories/s300007.htm>
- 36 Price, C. 1999. 'Australia's Population: Ethnic Origins.' *People and Place*. 7(4): 12.
- 37 Birrell, B. 2000. 'Intermix and Australia's Indigenous Population.' *People and Place*. 8(1): 62.
- 38 In the 1999 NSW Regional Land Council elections the number who voted was just over 6,000 of 20,000

- enrolled (30 per cent) but fully 50,000 were eligible to vote (12 per cent). Most indigenes in NSW live in the Sydney-Newcastle Land Council region, and in the Western metropolitan region, but respectively there were just over 600 votes and less than 300 cast in these regions. Wasson, J. 1999. *Statistical Returns for the NSW Aboriginal Land Council Election*. Electoral Commissioner NSW and Returning Officer, 3.
- 39 Sanders, W., Taylor, J. and K. Ross. 2001. 'Participation and Representation in ATSIC Elections: A 10 Year Perspective.' *Australian Journal of Political Science*. 35 (3): 507.
- 40 The largest indigenous populations in regional centres in Queensland are Townsville and Rockhampton with about 3,000 indigenous residents, but they constitute around 5 per cent of the population. In NSW there are 32,000 indigenes in Sydney, in a population of 3.7 million. There are 3,000 indigenes in SW Sydney in a population of 210,000. Source: ABS, 1996 Census of Population and Housing, Indigenous Profile.
- 41 Areas administered by indigenous councils in Queensland have an indigenous population greater than 85 per cent of the whole. The number of residents in these council areas is very small. They range from Yarrabah, outside Cairns, which has fewer than 2,000 residents to Wujal Wujal south of Cooktown, which has fewer than 300 residents. There are over 100 Aboriginal communities of various population sizes in the Kimberley, but only the smallest are overwhelmingly indigenous. For example, Balgo, south of Halls Creek is entirely indigenous, but has fewer than 300 residents. Source: ABS, 1996 Census of Population and Housing, Indigenous Profile.
- 42 Areas with a substantial indigenous component in Queensland include Normanton (54 per cent of 1,300), Coen (32 per cent of 350) in the Burke Shire and Kuranda via Cairns (31 per cent of 700). Of the larger centres in Western Australia, Broome township is 10,000, with 20 per cent indigenous and Kununurra is 4,000, with 15 per cent indigenous. In NSW there are centres such as Moree 15,000, 16 per cent indigenous and Shoalhaven, 76,000, 3 per cent indigenous. In Western Australia only the Kimberley has a large proportion of indigenous people, 45 per cent of 12,000 residents. Source: ABS, 1996 Census of Population and Housing, Indigenous Profile. See also Altman, J. 2000. 'The Economic Status of Indigenous Australians.' Centre for Aboriginal Economic policy Research, ANU. Discussion Paper 193. Summary, 1.
- 43 For a complete review of Aboriginal governance see, Nettheim, 1997; and Way, F. 1999. 'Land-Holding and Governance Structures Under Australian Land Rights Legislation.' Discussion Paper No. 4, *Australian Research Council Collaborative Research Project*.
- 44 The only Aboriginal local government entity in Western Australia is the Shire of Ngaanyatjarraku based on Warburton in the Goldfields region (directly south of the Kimberley). The population is 1,600 and there was no reported activity in mining, tourism or agriculture.
- 45 Limerick, M. 2000. 'Indigenous Community Governance in Queensland 1984-2000.' Unpublished, Department of Aboriginal and Torres Strait Islander Policy and Development, Queensland, 2.
- 46 Way, 1999, 64.
- 47 Queensland Audit Office, 2001. *Auditor-General's Report No. 3, 2000-2001*. Section 4, 'Results of Audits 1999-2000 of Aboriginal Councils and Islander Councils', 27.
- 48 QAO, 2001, 28.
- 49 QAO, 2001, 53.
- 50 QAO, 2001, 56.
- 51 Northern Territory Grants Commission, 2001. *Annual Report 1999/2000*, 13.
- 52 Nettheim, 1997, 42.
- 53 Way, F. 1999, 8.
- 54 Department of Aboriginal and Torres Strait Islander Policy and Development, Queensland, 2001. *Review of the Community Services Act: Proposal for Council Constitutions*. Discussion Paper, 2.
- 55 Aboriginal Australia is awash with public-funded self-determination. As at 30 June 2000, there were 2,703 Aboriginal organisations incorporated under the Aboriginal Corporations Act (Commonwealth). Incorporation allows for full control to be made by people of ATSI descent, and for accommodation of



- indigenous custom. An estimate of the range of activities carried out by indigenous corporations set up under the ACA Act, indicates that two-thirds fall into the category covering government-type services—education, housing, health, employment schemes and general community support. Ten per cent represent land title activity and five per cent can be categorised as business and media. The remainder cover culture, sport and recreation. Registrar of Aboriginal Corporations Annual Report 1999-2000, 3, and Nettheim, 1997, 18. Estimate based on registrations at 1997.
- 56 'There are about a thousand elected Aboriginal or Torres Strait Islander representatives in local government across Australia, mainly in areas with predominantly Aboriginal or Torres Strait Islander populations.' *Final Report of the Council for Aboriginal Reconciliation*, 2001, ch 8.
- 57 Diamond, 1998, 311.
- 58 See Sandall, R. 2001. *The Culture Cult*. Boulder: Westview Press.
- 59 Diamond is unable to do so, Diamond, 1998, 18.
- 60 Hasluck, 1988, 24.
- 61 Armstrong, G. 1971, 89. 'Current Development Among Arnhem Land Aborigines.' In Berndt, 1971.
- 62 Armstrong, G. 1971, 55.
- 63 Reeves, J. 1998. *Building on Land Rights for the Next Generation*. The Review of the Aboriginal Land Rights (Northern Territory) Act 1976. Second Edition Report, 111.
- 64 O'Donohue, L. 1994. 'Australian Government and Self-Determination.' In Fletcher, 1994, 5.
- 65 Commonwealth Department of Transport and Regional Services, 2001. <http://www.dotrs.gov.au/terr/norfolk/general.htm>
- 66 The Commonwealth Grants Commission, 1997. *Report on Norfolk Island 1997*, 41.
- 67 To the extent that Aboriginal separatists are interested, the concept often extends only to royalties for the use of land or resource extraction. The Australia Institute, 2000, 9.
- 68 CGC, 1997, 39.
- 69 CGC, 1997, 40.
- 70 CGC, 1997, 45.
- 71 Rowse, T. 1997. 'Indigenous Employment Prospects.' *Journal of Australian Political Economy*. 44: 127.
- 72 Altman, 2000, 1.
- 73 Taylor, J. and L. Roach, 1998. 'The Relative Economic Status of Indigenous People in the Northern Territory, 1991-96.' Centre for Aboriginal Economic Policy Research, *Discussion Paper No. 156*, 21.
- 74 Reeves, 1998, 90.
- 75 Previous organisations include: Commonwealth Capital Fund for Aboriginal Enterprises (1969-1974), Aboriginal Loans Commission (1974-1980), Aboriginal Land Fund Commission (1974-1980), Department of Aboriginal Affairs (1972-1990), Aboriginal Development Commission (1980-1990).
- 76 The prospects for indigenous self-employment are greatest when that person lives in a family with non-indigenous members. Hunter, B. 1999. 'Indigenous Self-Employment: Miracle Cure or Risky Business?' Centre for Aboriginal Economic Policy Research, *Discussion Paper 176*. Summary, 2.
- 77 ATSI Commercial Development Corporation, 1998. 'Removing the Welfare Shackles.' *A Discussion Paper on a Reform Initiative for Indigenous Economic Development*, Unpublished, 4.
- 78 ATSI CDC, 1998, 7-9.
- 79 ATSI CDC, 1998, 9.
- 80 The original fund was administered by the Aboriginal Land Fund Commission (1974-1980) thereafter folded into the Aboriginal Development Commission, thereafter ATSIC and CDC.
- 81 Indigenous Land Corporation, 2001. *Regional Indigenous Land Strategy 1996-2001, Queensland Regional Area*. <http://www.ilc.gov.au/>
- 82 Hasluck, 1988, 127.

# The New Authoritarian Separatism

**Trevor Satour**

Like many other Aboriginal people, I have experienced heard and seen many things in Aboriginal affairs. My paternal grandfather, maternal grandmother and mother were all born on cattle stations in the Northern Territory. My sister works with community and traditional owners in Laverton WA, my daughter on Goulburn Island NT, and my son on the Tanami Desert near Yuendumu. Through his mother's side my son Steven (now 27), is an initiated man from the Mutijulu community at Uluru.<sup>1</sup>

The appearance of Noel Pearson's paper, 'Our Right To Take Responsibility' in 1999,<sup>2</sup> which contained his ideas about expunging the welfare poison and shifting to the real economy resonated with media, social commentators, and politicians alike. The Queensland government immediately endorsed the implementation of the plan. Notwithstanding this exuberance and broader general agreement about the overall aims of eliminating welfare dependency, overcoming alcohol and social dysfunction, and moving into the real economy there are muted concerns about the authoritarian and separatist nature of the approach taken to date by the Queensland government as it implements Cape York Partnerships.

The dangers of authoritarianism and separatism have escaped critical attention in the cradle of unbridled enthusiasm and naive innocence characteristic of much in the current Partnerships environment. In trying to appreciate Pearson's stance on the welfare poison and its solution one is struck by his ability to exploit white guilt and leverage black innocence. The outcome for Cape York Partnerships is a faintly fascist aesthetic.

Noel Pearson sets contradictions and controversies in Aboriginal affairs in the modern context of contemporary capitalism and globalisation. His ability to articulate these in persuasive and succinct ways leads many to believe that some of the hitherto irreconcilable, or more perplexing issues in Aboriginal affairs can indeed be reconciled. This is the appeal, and it is unsurpassed. In a place like Cape York Peninsula if we could overcome negative welfare, meaning assistance without reciprocation, and the concrete economic and social structural problems through an ethos of taking responsibility these would be miraculous achievements.<sup>3</sup> If, in the process, we squared away some issues about reconciliation, reparation, the tradition-modernity divide, assimilation and separation, it adds immeasurably to the appeal.

## Cape York Partnerships

In his paper, Pearson decreed that a new regional interface between the Cape York communities and government was required, 'We need to establish a regional interface between outside government and the Aboriginal people of Cape York.'<sup>4</sup> A Cape York Partnerships Office has been established in Cairns, as has a Cairns Based Implementation Group (CBIG) consisting of Regional Directors and agency heads to coordinate and initiate action at the regional level.

Ostensibly, the Aboriginal involvement in the CBIG process is provided from Aboriginal regional organisations that 'are competent, are representative of the people and involve community members in their work'.<sup>5</sup> It is unclear what processes exist for information dissemination either before, or after CBIG meetings, in terms of agenda items, minutes and resolutions to the broader constituency of Aboriginal elected bodies, community groups and organisations throughout the Cape. The process has been driven from within the Queensland Department of Premier and Cabinet effectively sidelining the relevant lead agency, the Department for Aboriginal and Torres Strait Islander Policy and Development.

Concerns about Cape York Partnerships centre upon a gatekeeper structure proposed as a new interface between communities and the government system, and the nature of the implementation. Whilst there is unanimous agreement about tackling welfare dependency and the concrete economic and social condition of the people, there are mixed views on imposing the structural solution of a layer between the government and the communities. Some indigenous people for example, feel that it signals the arrival of an authoritarian revival harking back to mission manager days. Others feel partnerships should be forged at the local community or sub-regional level to maximise local participation and concentrate the focus on concrete outcomes. A problematic situation that may trigger compliance and legitimacy crises emerges from the relationship between those whose identities and interests are being represented, and those engaged in communicating, negotiating and networking on their behalf. Some think it inevitable that the ideological and politicised nature of structural separatism will lead to coordination, communication, or trust problems.

The implementation of Cape York Partnerships has carried a certain taint of distrust and unease. Whilst some can be attributed to anxieties and uncertainty that accompany change, an amount stems directly from a landscape devoid of open dialogue or constructive debate accompanied by authoritarian zeal and the sheer speed of the Queensland government response. In this process the critical need for urgency in addressing crucial economic and social deficits was not tempered by counterbalancing consideration about the complexity and nature of entrenched and intransigent issues, nor assessment of what may be working in the environment that could be built upon from a more positive aspect.

The lack of open debate and dialogue give reason to pause. For example, former Aboriginal Affairs Minister Fred Chaney and Neil Westbury noted 'important issues raised by Pearson that require informed debate', but questioned 'whether the leadership role he proposes for indigenous regional organisations mean they will be any better than existing institutions?'<sup>6</sup> The rush to implement without informed, open, or sustained debate has created a certain atmosphere of disquiet, foreboding, and inevitability for many of otherwise good intent. There are those who either feel or have been silenced by the sheer force of a process based on the exercise of power. It leaves a residue of fearfulness, resentment, and resignation amid a rising culture of recrimination and retribution.

Many are not clear about what benefits will accrue at the community level in terms of practical outcomes because the political discourse lacks detail and specificity. A great deal has to be taken on trust in a climate where alternative views, debate and questioning are suppressed

as an aggressively asserted moral superiority based on a new interpretation of history and identity holds sway, legitimised as it were, by the powers that be. One could be excused for thinking that part of the exercise is promoting ignorance.

Setting good intentions about the condition of people aside, the problematic created is that depicted by Stacey:

When power is applied as force and consented to out of fear, the group dynamics will focus on submission. Groups in states of either submission or rebellion are incapable of the learning that results in the development of new perspectives, new mental models, and innovative strategic directions. All the energy of such groups will go into avoidance or fighting.<sup>7</sup>

Many of the claims or propositions made within Pearson's original paper remain untested. In one sense, this is testament to the way that public perception can be influenced to justify precipitate action. Critically important among the untested propositions with respect to Cape York Partnerships for example, are possibilities for developing sustained momentum toward the real economy when faced with crippling economic and social capital resource deficits and significant remoteness factors. Without a critical mass of experience and exposure to market mentalities, and minus a developed private sector or home ownership, severely circumscribes the scope for private profit seeking investment.<sup>8</sup>

It begs the question about being precise when we talk about development. Are we contemplating that people who essentially work for the dole on local Community Development Employment Programs can aspire at some point to be engaged in the real economy and earn for example, a minimum living wage or average weekly earnings? By what process would this occur? In this context when, where and how should community interest override individual interest? Of relevance here is a point made by noted American black intellectual, Thomas Sowell:

Far from being sobered or made cautious by the great powers entrusted to them, social reformers are more likely to regard such grants of power as a confirmation of their own broader vision and deeper insights, and therefore as a mandate to force people to do what is 'really' best for them.<sup>9</sup>

Apart from ignoring these issues the Queensland Premier's Department puts out missives about disunity, failure to cooperate, nepotism and family fighting as if the Aboriginal community started this sequence in the first place. On that score, however, existing levels of mistrust and tensions about the same controlling interests and regional organisations proposed as vehicles for Cape York Partnerships have surfaced. Whilst the official missives suggest 'we are here to help and you're going to be helped whether you like it or not', the more fundamental issue relates to the distinctly Aboriginal problem, 'of not having a tradition of embedded authority vested in impersonal institutions.'<sup>10</sup>

In a recent study, indigenous researcher Frances Peters-Little, noted that:

Aboriginal community organisations have become the gatekeepers of the communities they service and somewhat problematic because the prominent and dominant families in the town are likely to have an advantage over other Aboriginal families. They consciously foster the use of this concept (of elder) for their own advantage and to the disadvantage of less powerful language groups and families. It is particularly unrealistic to expect all loyalties to kin and tribe to disappear when the structure of community boards is based on western notions of representativeness.<sup>11</sup>

She called it the community game.

A structure that leads to institutionalised separatism is problematic for many reasons. If we look at peacekeepers in East Timor, they are there to do a job. When it is finished, they leave. The intervention is focused and the outcomes are clear. With Cape York Partnerships, there is no such precision. We have identified a crisis and the solution is to establish a regional structure. When does the day come when the structure can dissolve? Or is the assumption that we will be in permanent crisis? Will the structure deliver democracy, equality, freedom and empowerment for the people at the bottom? How will it overcome the lack of ‘imbedded authority in impersonal institutions’? What checks, balances, or guarantees will there be against the structure being captured by vested interests?

The assumption that regional structures will do the job is just that, an assumption. One could argue that the real outcomes needed are at the local level, and the energy and effort should be expended here because this is where people experience and live life in contexts that predispose them to certain things and perhaps not others. This is the real world for Cape York people, and for change to occur it must, by necessity be in the actual living spaces that comprise webs of practices and meanings for the individual, the family and the collective. If there is new thinking it must penetrate these webs at source. In terms of one aspect of these webs, ‘a real structural problem Pearson does not address is how to disentangle the individual from the wider community in indigenous societies.’<sup>12</sup>

## **Gatekeepers**

A gatekeeper structure is a white man’s construct wrongly applied, and if we are stuck in a race mindset, we will perpetuate the mistakes of the past. The issues here are not about race. They are about people, how they think and act and what it would take to change. If we emphasise race we lose this focus, because ultimately race is a political construct that will become self-serving. In the wrong hands the race construct can lead to even more entrenched division, inequality, undemocratic outcomes and, may in certain circumstances, test the limits of our ethical and moral sensibilities about our common humanity. History tells us these things. Playing the race card mirrors white supremacist thinking and is destined to repeat the same mistakes.

Toward the end of his days, noted black American activist and avowed separatist the late Malcolm X turned away from separatism. On an overseas trip to Mecca and through Africa he wrote to friends and followers saying, ‘I’ve had enough of someone else’s propaganda. I’m

for the truth, no matter who tells it. I'm for justice, no matter who it is for or against. I'm a human being first and foremost, and as such I'm for whoever and whatever benefits humanity as a whole.<sup>13</sup>

Famous black writer, James Baldwin, realising too well the drawbacks of a victim mindset wrote:

I refuse, absolutely, to speak from the point of view of the victim. The victim can have no point of view for precisely so long as he thinks of himself as a victim. The testimony of the victim as victim corroborates, simply the reality of the chains that bind him—conforms, and, as it were consoles the jailer.<sup>14</sup>

Gatekeepers can be duplicitous creatures. Their distinct advantage is playing both sides of the fence. Many race separatists in history have played this card. A US example is the infamous badmouth rapper Ice Cube. He has made a personal fortune from street images of black struggle. Despite a middle-class upbringing and education, and having accrued significant commercial and corporate interests he is an avowed separatist with sentiments reflected in this reported media interview comment, 'one thing I believe we need to do, we got to separate. We really have to say, OK white folks. You wanna help us? You go to your community and break down the walls. Don't come here picking up trash. You handle yours, We'll handle ours.'<sup>15</sup>

A potential problem with gatekeepers is that only the favoured few get to make contact with the other side, and to benefit and profit from it. There is a presumption that contact is potentially dangerous or damaging to the rest. There is money and power in black struggle and race. Notwithstanding strictures about the racial divide, it is not insurmountable for those who cross lines to inhabit corporate spaces or require commercial contacts to underwrite their own existence. Complete separation in theory and practice is only for subordinates. A gatekeeper can maintain a private existence at odds with the public face. They trade and profit from identity by exerting control. A greater span of control increases profitable opportunity.

Gatekeepers' limit and control contacts with an enemy because of their special capacity to work across lines. They live on the line between black and white and free-range either side with a vested interest in maintaining the divide. Their world consists of 'them and us', and the 'thems' are aligned on either side of the divide. In this context, the enemy that declares to be your enemy ceases to be an enemy, and indeed can become an ally in maintaining the divide. A gatekeeper's most treacherous foe is one who wants to work cooperatively to bring about democracy and equality and close the divide. Their vested interest crumbles as the monopoly breaks.

On one side, gatekeepers assert moral superiority and surf white guilt from a blackness standpoint. On the other, they assert superior white knowledge and surf black innocence from a whiteness standpoint. 'They offer their subordinates and followers a fantasy of segregation while themselves consolidating its absolute opposite; a network of economic, cultural and political relationships that is driven only by the exigencies of the market.'<sup>16</sup> For them neither side is trusted as they seek to assert the reification process over normal sensibilities as the

moral landscape is flattened to provide the basis for building the new natural order based on authority, hierarchy and racial division.

Setting good intentions aside, what exists to prevent gatekeepers taking power and making increasingly heavy demands on those either side of them as an empire is consolidated and gains critical mass? And why would it not start to look like apartheid depending on the nature of the regime, access to resources, span of control, and multiple influences over community, public and private sector activities?

For those close enough the potential for a powerful separate entity exists. It is not beyond the realms of possibility for controlling government programs beyond education and health as now appear to be the case, to extend to employment and training programs, environment and heritage, family and community services, housing, individual welfare payments, land management, and telecommunications. Any major government initiative has the potential to be captured within the Cape York Partnerships net. Indeed, within this paradigm, the extent to which the trawling expedition can be applied is limited only by the imagination and opportunity.

There is related potential for joint venture deals that involve private sector interests. These include the Chevron gas pipeline if it eventuates, and an agreement over the Comalco mining leases along the western coast of Cape York Peninsula. These rely on negotiated Indigenous Land Use Agreements under provisions in the National Native Title legislation, and are presumed to generate an ongoing and significant royalty flow. If captured by the same set of interests these flows can potentially further the interests of an elite and powerful monopoly. Such a monopoly may or may not adequately or properly represent the community interest with integrity or deliver tangible benefits. Nor in time, might things concur with state interests. As long as the moral imperative to extract white guilt and override black innocence prevails, it begins to look like a separate and sovereign nation state beyond reproach, or standard accountability from either side.

In an analogous context, Lea contends that:

The Papua New Guinea experience indicates that organisational structures like the modern corporation, or trusteeship arrangements have not been successful for the economic mobilisation of indigenous people. They can lead to severe divisions between haves and have-nots because, enrichment will flow to the minority who have adapted their behaviour to those western organisational models designed for wealth generation.<sup>17</sup>

## **US Black Politics**

Cape York Partnerships is not about normal political divides and debates within the limits of the state as we know it. Nor is it about standard practices and ethical and moral sensibilities within a liberal democratic framework. More profoundly, it is concerned with race and a politics of separation outside of that paradigm, even whilst relying upon it for sustenance.

Neither is it about economic development in the normal sense of secular engagement in Australian capitalism or trickle-down theories of Third World development. It is best understood as a pragmatic attempt to build a separate economic base to secure power to be used as leverage to secure further concessions out of existing economic and political systems. The logic is tight, focused, and made possible by the skillful use of race and separatism to exploit the combination of white guilt and black innocence.

These things can be best explained by looking at the experience of US black politics through a line of heroic figures from Marcus Garvey to his antecedents Malcolm X and Louis Farrakhan. These were all black men of national and international stature and standing. They were leaders; men with vision, who embarked on heroic ventures to build separate nations, a separate economy, and a separate culture quite outside the framework of normal America, but geographically inside and feeding off it. They all held that the civil society and culture must be held subordinate to the absolute authority of men atop the political hierarchy, and that gaining economic power was the way to secure political power. Their worldview was firmly premised on keeping races apart.

We were the first fascists. We had disciplined men, women and children in training for the liberation of Africa. The black masses saw in this extreme nationalism their only hope and readily supported it. Mussolini copied fascism from me but the Negro reactionaries sabotaged it.<sup>18</sup>

It might surprise to learn that there is a history of links between extremist white groups and higher echelons of the black movement in America. The links are forged on shared beliefs about racial purity and segregation. These beliefs have found expression in many ethnic, political, religious and social movements in history. They are nothing new, and where they have taken institutional form and been driven by hardcore elements many forms of aberrant human rights violations have been recorded. Events in Burundi, the Congo and Rwanda confirm that these extreme impulses are not confined to whites, and it is the study of these extreme manifestations that alerts us to the presence or potential in our immediate environments. It is an interesting footnote to think that in Bosnia-Serbia where prolonged bombing could not dislodge President Milosevic, a mass display of democratic uprising had an immediate effect.

Marcus Garvey was Jamaican born (1887). He went to the USA where he started the Universal Negro Improvement Association (UNIA) in Harlem (1916), and became the driving force of a pan-African movement that dreamed of the black African homeland and a black African state. In 1920, he presided over a UNIA sponsored international convention at the UNIA headquarters at Liberty Hall in Harlem, when a Declaration of Rights of the Negro peoples of the World was drafted. That Declaration and the UNIA still exist.

Garvey had a strong conviction that economic power was the only way for a minority group to attain political and social power. He set out to create economic wealth. From a base in Harlem beginning 1916 and by 1920, he had started the Black Star Shipping Line (1919), a chain of restaurants and grocery stores, laundries, a hotel and a printing press. 'Be not deceived', he wrote in Garvey's *Weekly Digest* in February 1931, 'wealth is strength, wealth is



power, wealth is influence; wealth is justice, is liberty, is real human rights'. Garvey believed there were two kinds of men in the world—those who succeed and those who do not—and a strong self-belief fuelled his self-help philosophy that followed a lineage back to a well known 1848 essay by former slave Frederick Douglass, with the title, 'What Are the Colored People Doing For Themselves?' In that he lamented, 'We are imitating the inferior qualities of and examples of white men, and neglecting superior ones.'<sup>19</sup>

In Garvey's ideal for governance in his pamphlet 'Governing the Ideal State', he envisaged a President with absolute authority. He was a phenomenon of his time who many called the Black Moses leading his black sheep back from the wilderness. However, he was ultimately convicted of fraud charges relating to the Black Star Shipping Line and imprisoned in Atlanta (1925) to serve a five-year sentence, that President Coolidge subsequently commuted to deportation as an undesirable alien (1927).

After his infamous meeting with the KKK in 1922, Garvey reported that 'I was speaking to a man who was brutally a white man, and I was speaking to him as a man who was brutally a Negro'.<sup>20</sup> He was openly scornful of other black American leaders who he thought accommodated too much to whites for wanting to integrate and be like them. He considered them to be traitors to his ideal of a black nation, and not to be trusted. He admired white supremacists because they 'were honest and honorable in their desire to purify and preserve their race even as we are determined to purify and standardize our race.' You know where you stand with a Klansman.

In a written piece titled 'The Negro's Greatest Enemy' he wrote:

Having had the wrong education as a start in his racial career, the Negro has become his own greatest enemy. Most of the trouble I have had in advancing the cause of the race has come from Negroes. Being black, I have committed an unpardonable offense by making myself famous as a Negro leader of millions. In their view, no black man must rise above them.<sup>21</sup>

According to the Garvey code, blacks against separatism and those who refused to help him build the economic base were ignorant fools or jealous. Rather than try to work with others he preferred to tread his own path. And like Garvey, Louis Farrakhan today asserts that division among blacks, and the ignorance that fuels it, is the Nation of Islam's greatest enemy.

Garvey had numerous run-ins with other prominent blacks like W E B DuBois a seminal figure in US black politics. DuBois believed that blacks should aspire to liberal democratic ideals and work for improvements within the framework of the American Constitution. He helped start what is the largest secular black organisation in America today, the National Association for the Advancement of Colored People (NAACP). The NAACP today proclaims, '91 years of making democracy work' and 'we have worked to change attitudes, laws and institutions for the good of all Americans'.<sup>22</sup>

The Garvey tradition in US politics had its antecedent in the rise of the Nation of Islam movement that gained considerable momentum under the direction of Elijah Muhammed

after he assumed leadership in 1934 and recruited both the late Malcolm X and his successor Louis Farrakhan. The movement has built an enormously strong economic base and political entity out of an organisation based on strict male authority and hierarchy. The movement has a rigid moral code that includes total abstinence from alcohol, eating pork, and sexual promiscuity, and a hierarchy of strict authority and discipline rules over the private lives of subordinate individuals and families. Male authority and leadership in the family and political structures is reified and obeyed at all times. This is an extension of the religious belief that the male religious leaders at the top of the hierarchy represent the Deity.

In the Nation of Islam Movement a percentage of individual incomes are given over to the organisation as a contribution to expenses, and to help build the collective economic base. Collective economic power is maximised by the hierarchy in their dealings with the corporate sector to extract concessions and profit share arrangements that benefit the organisation. Economic power can also be used as a weapon to leverage political power as Louis Farrakhan exhorted followers in a Chicago speech to followers after the Million Families March in Washington, 6 October 2000, as to how they should approach corporate interests and prospective political candidates in the forthcoming US presidential elections.

The exercise illustrates the expediency of power and what works, quite apart from the framework of standard political affiliations or political parties. The political topography operates along different dimensions built on the underlying appeal to racial purity and the separate nation therein.

The Nation of Islam holds the mirror of white guilt to white America. One of Malcolm X's most controversial statements was about 'chickens coming home to roost' after the assassination of President Kennedy. Louis Farrakhan exhorts that an immoral American Government has brought the AIDS epidemic and drugs to decimate his people. Malcolm X was assassinated giving a public address in 1965. It was widely held that this leader and mentor Elijah Muhammad had ordered his death, and whilst that was never proved in a court of law Malcolm X had no doubt, and recorded it in his autobiography compiled before he died.

Subsequently Louis Farrakhan was recorded at a private meeting in his mosque in February 1993 admonishing an interviewer:

Did you teach Malcolm? Did you put Malcolm out before the world? Was Malcolm your traitor or was he ours? And if we dealt with him like a nation deals with a traitor, what the hell business is it of yours?

You just shut your mouth and stay out of it. Because in the future, we was going to become a nation. And a nation gotta be able to deal with traitors, cutthroats and turncoats. The white man deals with his. The Jews deal with theirs. Salman Rushdie wrote a nasty thing about the prophet and Imam Khomeini put a death threat thing on him.<sup>23</sup>

The aesthetic is brutal but consistent with the worldview.

## The New Authoritarian Separatism

This sets the scene for the emergent new authoritarian separatist strain. It heaps blame on Aboriginal men. They are publicly derided for being inept and poor leaders. Presumably, they have failed their historical obligation to family, community and race. This appears to be the sentiment behind remarks about drunken parasites and other asides issuing forth in the public discourse. The word on the street is that many men are too far-gone, too old, too drunk, too out of their minds, and perhaps not worth salvaging. It would be more strategically humane in the interests of the race overall, to leave these fall by the wayside; and concentrate limited resources on building the pipeline for the future. In particular, this gives rise to a priority on education.

Yet, attacks on men create an effect. If we have a crisis, we need a solution. If the current leaders are failures, we need to replace them. It sets the mood for deliverance and creates an important element of establishing the preconditions for the authoritarian response. Replacing or reprogramming men is necessary for the broader agenda of racial recovery and redemption. In a sense, we are witnessing a privatising of race in individual hands to be shaped in certain ways to emphasise certain masculine characteristics about fatherhood and leadership with a hard-edged strength and discipline for nation building, and not so much traits about caring, love, tenderness, or sympathy.

Badmouth rapper Ice Cube talks about 'spineless black leaders' in the 1970s who took their eyes off the prize and committed the grave sin of trying to make public schools better instead of building their own schools. The underlying appeal is to racial purity, and the role of men, critical to establishing and maintaining an authoritarian hierarchy to exercise control and discipline over species reproduction and procreation. Ice Cube's sometime mentor is Louis Farrakhan from the Nation of Islam.

The attacks on Aboriginal men in the Cape apply to individuals, but also implicate institutions like the elected Aboriginal Community councils, the Aboriginal Coordinating Council and the ATSIC Peninsula Regional Council. Peter Botsman writes in *The Courier-Mail* newspaper that Cape York traditional owners do not have a capacity to get things done, with the corollary 'Noel Pearson has a vision, and he is the only individual on the Cape capable of leading Indigenous communities through the trauma of brutality, disenfranchisement, false paternalism, and the horrors of alcohol and welfare dependency.'<sup>24</sup> And because stronger leadership needs to be reflected in governance, it gives rise to the new regional interface.

The symbolism in Botsman's statement, and indeed others like Tony Koch of *The Courier-Mail*, on this aspect of men and leadership is powerfully reminiscent of the rise of other great men having a date with destiny. And on another front these outpourings of white guilt contribute to an orchestrated and enforced amnesia about principles that bind us as a nation and help to further create a climate for separatism by making belonging and solidarity to the new order seem attractive and powerful. They become part of an inducement for people to shift camp without warning about what that might mean, or where it could lead in terms of camps around the corner. Important in these essentially political exchanges, is what is not said, inasmuch as what is 'actually' said.

Nothing is said about democratic process, ethics, morality, or what codes apply. Nothing is said about equality, freedoms of association and speech, or the national interest. Nothing is said about what will happen if control remains in the hands of an un-elected power elite or how, in this context, the acute Aboriginal problem of embedded authority will be overcome. Nothing is said about accountabilities because there is no detail or specificity about what the new camp may ultimately look like. The sum total amounts to promoting ignorance, and in the circumstances echoes with nuances of earlier periods in Aboriginal affairs characterised by institutionalised authority and hierarchy.

Harking back to Chaney, 'Pearson's paper suggests we need to talk through the ideas he proposes and develop the detail.'<sup>25</sup> Part of the detail required is precisely how communities and people on the ground will benefit and under what protections and safeguards. What specific outcomes are we pursuing and how will we measure them? How will we build a sustained movement into the real economy in a bicultural context of structurally disadvantaged remote locations devoid of normal investment and saving patterns, without home ownership and private property, and not imbued with market sentiment? Apart from these constraints there are the emotive and mood states of individuals and a community that mitigate against these things because of continued immersion in the politics of autonomy and self-determination?

The outpourings from the likes of Botsman give credence to views expressed by black American intellectual Shelby Steele, whose book, 'A Dream Deferred: The Second Betrayal of Black Freedom in America', wherein he concludes that it was not joblessness that bred the black underclass, but 35 years of counter-productive government programs based on white guilt and deference mainly designed to protect and preserve white institutions under a thin veneer of redemption.<sup>26</sup> The first betrayal was separation. And with Cape York Partnerships we might also pause to think about betrayal closer to home when the very institution of government that encouraged and urged Aborigines to take on modern habits like democracy in the first place, is now seemingly disposed to renege on that undertaking. The silence on this front is not only deafening, it is damning.

The fact that we have to make choices is part of modern living. We also wear the consequences of those choices. The fact that we should act well and choose wisely favouring negotiation over violence and justice over domination is what governments have encouraged in the quest to bring people into line with modern ways and democracy. We have endeavoured to do these in Aboriginal affairs and like many things, we have been successful in some places, less successful in others. Yet the cynicism and pessimism that fuels a desire to override choice and limit democracy is a pendulum shift taking us back in time to previous eras when authoritarian impulses and domination reigned supreme. With Cape York Partnerships just whose interest will be served in the final analysis, is not yet clear.

Susceptibility to the authoritarian impulse affects us all. When things go wrong, or not as we would like, it is tempting to want to intervene. But our interventions can treat people like permanent innocents and needed to be shielded from the modern complexities and consequences of choice. This scenario makes the complex issues of judgement and negotiation about morality irrelevant, because these choices are made for them. We treat them as innocents

much as like children. This sentiment seems to be reflected in an Ice Cube comment arising out of a conversation with Louis Farrakhan, that 'Mentally he told me the people are babies. They are addicted to sex and violence. So if you've got medicine to give them, then put the medicine in some soda so they get both and it won't be hard for them to digest.'<sup>27</sup>

Alternatively, we can accept that people are independent actors in the modern world who can think and act for themselves and we therefore have no need to shield them from difficult choices. We can reject the authoritarian impulse. In her analysis of Aboriginal affairs in Queensland, Rosalind Kidd wrote about the need for Aboriginal and non-Aboriginal alike to question the propriety of those who wield power over our lives. She characterised her work as 'a study of the eternal optimism and the congenital failure of successive Queensland governments as their activities impacted on Aboriginal lives.'<sup>28</sup>

Her sentiments seem to mirror the Future Vision or Impossible Dream question posed by an official Cape York Partnership Plan document, and we may ponder whether we have learned the lessons from history, as we seem determined to repeat mistakes. From one wild swing of the pendulum to another and back again, in an epilogue to Kidd's saga that could be titled, *How We Still Civilise*.

We are increasingly aware of gender and sexuality influences that arise because of modernity. Like elsewhere these influences have resonated strongly with many Aboriginal women to the point where many of our institutional frameworks and organisations have been infiltrated by agendas that put gender and sexual preference first. Within this discourse, women have established their own action frameworks and networks. Hence, we now have women's legal, children, family and health services and networks. These dovetail with contemporary concerns in the areas of child abuse, child protection, domestic violence, divorce and separation, and parenting. Yet, rightly or wrongly, a perhaps unintended consequence is internal division and damage to the integrity of the original agenda in Aboriginal affairs about unity as one race of one people, with one body politic, and one future.

Now as we look around, we are divided in so many ways. Our traditional family structures, patterns of work and leisure activity, personal and political allegiances, and inter-generational communications have changed irrevocably along with the rest of the world. And notwithstanding issues of merit or morality about issues like gender and sexuality within these cataclysmic shifts, the implications for many indigenous men is that they live and work in increasingly hostile environments where their issues are ignored or overlooked. We might consequently, be looking at another version of the angry young white male syndrome in the future. Regardless of rights or wrongs, the divisions and rifts widen. It makes the future of separate indigenous policy and service agencies more tenuous as specialist interests within, find more affinity with similar specialist areas without, than with the spectrum of indigenous issues as such.

A major influence on identity is the spread of global culture. The generation gap is getting wider as we increasingly lose touch with younger generations. With indigenous kids, we see the drift to American rap and hip-hop culture. They wear the clothing and affect the attitudes

and outlook. While we admire Cathy Freeman, we admire Michael Jordan and Tupac Shakir. Anthony Mundine struts his stuff with attitude as a promotion of individuality and national pride, 'I won't just be fighting for Aborigines, I'll be fighting for all Australians with good hearts and there are plenty of them out there.'<sup>29</sup> The movement is spontaneous, not mechanical, the dance rather than the forced march; and the analogy of free-range chickens rather than force-fed battery hens.

In terms of breaking down the race category time and benign neglect do their work. It echoes the nuance of an American scribe railing against progressive-liberals wishing that Rosa Parkes was still down the back of the bus, even as Oprah Winfrey was splashed across the billboard down the side of the very same bus. We step back in time even as the old race anthropologies are pushed further from view and recent discoveries show that our DNA makeup is almost identical and genetic engineering allows us to do things with our bodies that make race irrelevant.

Our bodies and cultures compete globally in the commercial and corporate spheres as the political message in Yothu Yindi's Treaty song is belted out in joyous refrain that resonates with appeal to a wide audience. And in terms of our younger ones, an apathetic Generation X is unlikely to show much enthusiasm to ideological appeals for justice, rights and equality when other attractions abound. Indeed many feel embarrassed or resent being singled out as representatives of 'their people' when they just want to be like the rest in the struggle for identity and standing among peers.

## **Political Correctness**

As race rhetoric polarises debate, it galvanises the opposition to the extent where they eventually become adept at rebutting the charges against them, about being unjust, prejudiced and oppressive. The rhetoric plays out with two different discourses resulting in charge and countercharge. Each side comes to mirror the other. Discrimination for one becomes appointment on merit for the other. Parochialism for one is proper procedure for the other. Rights for one, are wrongs for the other. In this emotive context once a party introduces an agenda into the discourse as a right and correct interpretation, sensible discussion and moderation inevitably tend to disappear.

Stemming from the experience of slavery and colonial conquest, charges about political correctness were used as a political tool by blacks to break open institutional bias, and subsequently appropriated by other rights movements and social causes. Women, the gay movement, and disability groups use similar rhetoric to that which has been pivotal in justifying affirmative action and special programs for blacks. The political correctness charge has also been appropriated by those original targets for chastisement and levelled back at source. In many contexts, we now see blacks themselves, and these other groups accused of political correctness. Both the rebuttal and subsequent turning around of political correctness charges arise out of the unfolding of the rights discourse, and also in the wake of real world evidence about increasing assimilation and integration into global capitalism and the limits of the state. These things have taken a lot of the sting out of rights movements and create a

moment in time that anti-liberal forces can use as leverage to dismantle the justification for rights and pave the way for a new rhetoric of responsibility.

Blame rhetoric is also used as a hammer to fix wrongs within rights movements. Within ranks, some voices are heard more than others and some get more economic opportunities than others. Women turn on men for patriarchal attitudes, the sophisticated and more educated ones are called elitist, the gays challenge the straights, and so it goes. Blame rhetoric becomes so ingrained that moral discussion and consensus building are suppressed. And the contexts of contention get further confused when, for example, black feminists mount critiques of white middle-class women from a race perspective using the same rights rhetoric but out of the different context; or black women use the same arguments against black men that were initially used by all blacks against whites, and use that as justification to establish their own legal and other specialist services quite apart from the men.

Such splits can occur along as many lines that emerging specialist interest groups of one kind or another claim special dispensation based on some 'naturally given endowment with objective criteria'. But essentialist presumptions about a 'natural' unifying entity called race run up against empirical truths of the real world, and in this light we see it for what it is, an artificial, social construct built on ideology and politics; not a natural entity about which claims can be made independent of context and interpretation.

The evidence that a pan-Aboriginal presence is wanted or warranted in the Cape is not convincing. There is empirical evidence to suggest the opposite. The Western Cape Traditional Owners Organisation is quite explicit in a statement that prefaces their charter that regional bodies have not properly represented them. That the recent re-registration of the Cape York Land Council was neither a smooth nor uncontentious process, was a sign of a people's struggle to break free. The rival bid by Western Cape Traditional Owners to become the representative body for the Cape York Peninsula did not arise out of thin air, fragments of imagination or political machinations, as spin doctors who benefit from, and want to retain an existing system, would have it.

Rather it was an outcome of long held frustration and simmering resentment and a signal of a changing mood from people realising that taking responsibility is the only way ahead and anything is better than being kept in the dark and powerless. It is quite rational in these circumstances to redesign the rules of engagement. And if you compare the structure and operation of the Cape York Land Council with those of the Central and Land Councils in the Northern Territory for example, there are evident contrasts in terms of checks and balances that give effect to accountability, decentralisation, delegation of powers, democracy, and transparency. Many perceive that the existing Cape regional organisations are controlled by a self-interested few who put their own agendas first.

Some of these organisations operate on their capacity to acquire government grants as notionally representative bodies, and that there will be some community benefit. These are unfounded assumptions according to those who feel that in many cases, the community has no idea in the first place that bids have been lodged, 'on their behalf' as it were, and if the

grant does come through and there are no self-evident outcomes, no complaint arises because nothing was expected to happen in the first place! If there is any expectation, it is with the funding body, not necessarily the target community.

Apart from financial and program accountability to government there is a lack of accountability to the community. There are no binding service agreements between the communities and these organisations or mechanisms for appeal and review. This is a loophole leaving the gatekeeper in a position to play the ends off each another and escape scrutiny in the middle. The funding bodies do not seem to look beyond these organisations for accountability purposes leaving one to wonder whether leverage along the black innocence-white guilt nexus is causing some in the government system, even at very high levels, to turn a blind eye.

These are challenging notions in terms of not only the present but also future scenarios, for example, where agreements have been reached about third party management of personal welfare entitlements within the Cape York Partnerships framework. There are questions in here about whether normal provisions for accountability, information dissemination, judicial review, the Auditor-General and the Ombudsman apply. And irony in the fact that such occurs in the shadow of current efforts by the Queensland government to resolve questions about the underpayment of Award Wages, the Aborigines Welfare Fund and Savings Accounts that emanate from previous periods when authoritarian control, black innocence and separatism were the order of the day.

However, to the extent that this funding and accountability scenario holds, it describes a neat hermetically-sealed package without authenticity, integrity or truth to either governments, the taxpaying public, and least of all those it purports to help. There are those Cape York community people who contrast their own circumstances with those of the relatively well paid and provisioned in these gatekeeper organisations, and without evidence of outstanding progress on the ground in terms of their own material or social circumstances, are left wondering what it is all about. If the exercise is to apportion blame to those who have failed Cape York communities, the fact remains we have all failed.

In the Cape, there are different constellations of traditional and historical peoples brought together in different locations. Some of these differences have been starkly highlighted with the introduction of Native Title, a legally instituted formal process to assess the claims of people with respect to land. It creates division, not so much as black against white, importantly within the Cape, black against black. Distinctions are made between historical peoples and legally constituted traditional owners, and there are further cleavages with disputed claims between traditional owners. In the Northern Peninsula Area at the tip of Cape York Peninsula there is added complexity due to generations of postwar intermarriage and intermingling between Aboriginal and Torres Strait Islander residents.

The black and white reality of the Cape is mediated by shades of grey. People on the west coast do not speak for those on the east coast or those in the middle, and vice-versa. Noel Pearson might present as a leader to some in the white system but in this system other distinctions count. If we go back to the traditional law as indicated in Pearson's original paper he would



not presume to speak for other groups. The Wuthathi do not speak for Kunjun, Angkamuthi, Kaanju, Olkoloo, Wik, and so forth. People of one community do not speak for another. There are extended family constellations, interracial marriages and liaisons, and people have interpersonal and professional links internally and external to the Cape.

There are those with religion and those more proficient with language and historical interests. Among the religious, there are Anglicans, Lutherans, and other denominations. There are differences where some work for government and others for the private sector. Some are in cattle and primary production, others in mining and tourism. Yet again, others work in the Community Councils that comprise local government, or the indigenous service organisations. Where Pearson makes the point that:

it is a gross simplification of traditional society to conceive of it as a simple homogeneous community. It is the same with contemporary Cape York communities. We are not simple communitarians—individual independence and autonomy play a key role in our society,<sup>30</sup>

It might help to explain why some individuals can escape the race net. If everything was predetermined by race, then of course, no one would.

A policy that aims to institutionalise separate development through gatekeepers will most likely, 'substitute theoretical oppressors with real ones'.<sup>31</sup> That is white theoretical ones with real black ones, because in Aboriginal society authority is not embedded in impersonal institutions. When things get personal, the better educated, more informed, and more aggressively determined have a distinct advantage. This has been the case here and in the third world. We should exercise vigilance. Governments that want to sanction such developments stand to breach their charter within the framework of Australian democracy to exercise duty of care, treat people equally, and protect the interests of the less fortunate.

To mask differences for the purpose of reifying race denies real world heterogeneity for what is an artifice of a social construct. Incorporation into the mainstream economic and social system is the best, and indeed, will remain the only opportunity for most indigenous people to succeed. In this sense, people need more contact with, and immersion into mainstream, not less. Innocence can be inflated by the romances of unity and the nation that can act as a barrier, or inhibit willingness to contemplate crossing lines. Gatekeepers block and separatists divide.

Placing race at the centre of a political agenda can distort normal sensibilities. We recoil from One Nation sentiments knowing that the combination of race with messianic zeal is dangerous. The quest to return societies to some imagined or pure former glory has led to some of the most abject atrocities in history, even within modern democratic societies. The first two people convicted in world courts on genocide charges were the black Africans Jean-Paul Akeyesu and Jean Kambamba for Rwandan atrocities against the Tutsi.

Historically many Third World dictators or zealots have had western educated backgrounds. Esteemed academics, such as Harvard University, have produced their share of dictatorial

tyrants who have returned home to inflict suffering on their already down-trodden and oppressed populations. The tools that they have been equipped with are double-edged swords and can be used for good or evil. In this respect there is a rational aspect to irrationality which leads black intellectual Paul Gilroy to press the point that, 'those of us tied by affinity as well as kinship to histories of suffering and victimage have an additional responsibility not to betray our capacity to imagine democracy and justice in indivisible nonsectarian forms.' In essence it is this additional responsibility that I speak to here, while Gilroy concludes that the only way to overcome such irrational impulses is to free ourselves from all, 'racialising and raciological thought, from racialising seeing, racialised thinking, and racialised thinking about thinking, because this is the only ethical response to the conspicuous wrongs that raciologies continue to solicit and sanction.'<sup>32</sup>

In a famous 1910 essay William James wrote about the 'Moral Equivalent of War' in which young Americans would be enlisted into an army where they would get the childishness knocked out of them and come back into society with healthier sympathies and soberer ideas.<sup>33</sup> The concept is simple enough. It has been used since in many different contexts by those wanting to mount grand efforts in the national interest, but where, as in wartime, some normal protocols and sensibilities have to be set aside. These go into suspended animation until authorities declare the crisis over. As Marcus Garvey railed against Negroes who did not want to be Negroes, he was anchored in a mindset around a mental construct of the black nation and the pan-African diaspora to provide the rationale for his personal moral equivalent of war. These sentiments subject individual agency, autonomy and subjectivity to the perceived higher good of nation and race.

On all these counts, we ought to be careful if Cape York Partnerships are about 'knocking the childishness' out of people and treating them as innocents. If it is about a regime that does not allow people to stand on their own feet in the spaces where they live and exercise autonomy and free choice even if that means making mistakes and having to learn from the consequences of difficult choice we should be concerned. If it is about enforced abstinence and controlling discretionary personal income, we ought to be concerned. If it is about the imposition of strict moral codes or standards for personal behaviour within an ascetic framework we should be concerned. If it is about placing economic and political power in the hands of a small undemocratic, personal power elite we should be concerned. If all this is couched in terms of an overriding economic imperative or moral equivalent of war we should be doubly concerned.

We need to be alert to racism and fascist tendencies in all their pre-political, cultural and psychological forms as well as their more overtly political and institutionalised forms. Close to home our own anxieties and uncertainties about race are characterised in the different treatment by *The Courier-Mail* to aspects of Pauline Hanson's thinking on the one hand, and Noel Pearson on the other. If Pauline Hanson spoke about a separatist solution for blacks, it would be deemed an outrage. Yet, for Pearson it is applauded. In the context of this discussion, there is a double standard, and it is ironic for one to be presented as racist and the other not. To the extent that this might be true, it is itself racist because in terms of this logic, racist thinking is racist thinking, regardless of origin. We cannot simultaneously destroy and promote racism

in such an ambivalent and contradictory fashion when the context of the existing condition itself is the problem.

Historically, many ethnic or racial groups have been dispersed or separated from their original homelands. There are many millions around the globe in this situation of which the plight of the Jewish people and the African descendants are two. Some of the dispersion and separation has been forced, some voluntary, and for many reasons most will not return. To the extent that these groups are acculturated and assimilated into the lifestyle rhythms and the geography of the locations where they live the imperatives and pull of the of the homeland will recede. Their sense of otherness and belonging elsewhere will diminish. Genealogy and the homeland will remain a factor only to the extent that people find some imperative or use for ritual commemoration:

The idea of diaspora offers a ready alternative to the stern discipline of primordial kinship and rooted belonging. It disrupts the fundamental power of territory by breaking the simple sequence of explanatory links between place, location and consciousness. It destroys the naïve invocation of common memory as the basis of particularity in a similar fashion by drawing attention to the contingent political dynamics of commemoration.<sup>34</sup>

In an Aboriginal context the tension between current location and birthplace, belonging will also ease with time. The reality is that we have separatist walls that are more leaky and porous than some would imagine, or perhaps care to admit. Our uses for memory and ritual commemoration will become increasingly a question of individual and community choice rather than the grand symbolic gestures. And when indigenous researcher Frances Peters-Little notes that ‘today’s popular notions of community, identity and self-representation are increasingly problematic’<sup>35</sup> she was right, and they will become even more so over time. A monolithic black identity aria political entity is a fiction. And for this reason, we ought to be careful about proposals based on race and separatism that touch not only on this problematic, but also the liberal and democratic traditions of the nation.

We live in a fluid and changing situation from place to place and from individual to individual, and the struggle to create self and identity occurs in the locus of our everyday lives. Unless we can connect to these everyday practices, the rest is politics. We can engage people locally in the course of their everyday lives to create change in ways that empower them to make choices and keep our own democratic ideals and ethical sensibilities intact, or continue with the fantasy of a pan-Aboriginal presence. In a related context American black feminist bell hooks reminds us that:

Unitary representations of black identity do not reflect the real lives of African Americans who struggle to create self and identity. Psychoanalytically it is clear that the unitary self sustained only by acts of coercive control and repression. Collectively African Americans fear the loss of a unitary representation of blackness because they feel we will lose a basis for organized resistance.<sup>36</sup>

Race theory does not have a language to describe intermixing and fusion without conjuring up the existence of some pre-existing uncontaminated state. This tends towards an ideology and backward looking form of politics aimed at invoking sentiment about a pure form of existence prior to the arrival of Europeans. It leads to romanticism and diverts attention from needs and realities in the here and now. It is normal to remember attitudes and actions that must never be repeated, and in time to forget; or at least more positively remember to allow a process of reconciliation to begin. As intermixing and fusion increase and more individuals achieve and identify with mainstream, the more the race category fails to describe, explain, or predict reality. Where race leaves off, the likes of gender and class emerge. The discourse of separatist politics increasingly fails to hold our attention, because it is divorced from the reality of growing aspirations and differences in lived experience.

While notions of a pre-existing uncontaminated state, and homeland sovereign territory give impetus to diasporas, territorial control legitimates and unifies aspirations for separatist movements. Ownership and control of sovereign territory is essential for hardliners and to get there the means invariably justify the ends. In a situation of sovereign control over a piece of Australian territory diaspora could be seen to link disparate themes across time and space like culture and identity, deliverance, destiny, self-determination, reconciliation, reparation, and the divide between tradition and modernity. Diaspora helps explain why some can escape the racist net by offsetting the restrictions of strict determinism where race is said to primarily determine outcomes. Control over sovereign territory conjures up notions of statehood and raises the notion of governance. The breadth of vision is sweeping in time, and on a grand scale, befitting the power that diasporas hold for so many ethnic, racial and religious groups.

Yet if we scale back from the final solution to everyday existence the real questions are about 'what mix of cultural, political or economic separatism or integration will work. And what mix will not'.<sup>37</sup> There are three choices for Aboriginal people. The first and most likely choice is achievement in the sense of integration into the mainstream economic and social systems. This is mainstream and whether it is assimilation or integration is up to the individual. Mostly we get to this level through individual achievement and effort.

Individual examples from different fields are Cathy Freeman, Anthony Mundine, Aden Ridgeway, Marcia Langton and John Moriarty to name just a few. There are myriad others, most of whom we do not hear about. Their lives are articulated and attuned to the mainstream social and economic system. Ultimately this will be the choice for the majority of people, and the reason why a pan-Aboriginal political movement, separate culture, and separate economy will not gel. It is worth pondering Gary Johns' point that, 'An Aboriginal capitalist is a contradiction in terms',<sup>38</sup> and similarly Lea, 'the more successfully the community becomes integrated into the economic mainstream, the more irrelevant the traditional cultural context may become'.<sup>39</sup> Policies aiming for autonomy, self-determination and separatism will be increasingly difficult to sustain because they run up against the economic imperative and slippage into the attractions of cosmopolitan mainstream capitalism.

A second choice is integration at the economic level and separation on the social. This could describe many of the Aboriginal estates in rural, regional and urban settings across the country.

People may have mainstream or local Aboriginal service industry jobs including with a local Community Development Employment Project (CDEP). The CDEP is an unemployment benefit offset program that has operated for several decades to give people local employment and training opportunities. Most jobs are blue collar, itinerant and low paid.

People connect to the mainstream economic system for income and sustenance but retain a strong sense of separate identity in the social sphere. The possibilities for independence and self-sufficiency are largely tied to opportunities in the local or regional economy.

The third choice is separation from both the mainstream economic and social systems. This is only possible for very few, and in a strictly limited number of places. I refer to areas where people live on traditional land with access to independent income from enterprise, investments or mining royalties, and access to forms of traditional hunting and gathering. Enterprise ventures may include arts and craft, pastoral or tourism ventures. Normal citizen entitlements to welfare benefits would apply, but it may well be that this choice comes with consequences in terms of negotiated trade-offs for opting to live a separate existence.

In essence, separatists prevent opportunities for critically needed learning and growth to the extent that they shield people from options or the consequences of choice. Ignorance is not a useful state if you want progress, and sovereignty may be a hollow victory if it leads to further cultural decline, internal fragmentation and division, and economic marginalisation. The ultimate need of the separatist is to keep followers in the game by convincing them that the way forward is to stay separate, even as evidence mounts that this hinders prospects for real cultural and economic emancipation.

Society can be organised in two ways; through the coercive forces of government dictate, or voluntarily through free association and interactions among private individuals, groups and organisations. This is the first and ultimate choice Aboriginal people have today. We either develop healthy, functioning, self-sustaining forms of civil society or leave fate in the hands of political society. In a civil society, you make the choices. In a political society, someone else does.

Cape York Partnerships can operate as part of civil society ethos but this would require a change from a focus on structure to a focus on people. It would require working to recognise the integrity of the existing differences within and between communities of people, and negotiating the decentralisation and devolution of program and service responsibilities tailored to local circumstance. It would require listening and being responsive to those not averse to partnerships but wanting that articulated directly at community level without an intermediary gatekeeper structure. There is ample scope in the range of challenges and issues within each community to frame a realistic empowerment agenda but this will require a paradigm shift from the politics of a race-based ideology toward a more directly inclusive dialogue and interaction to develop environments for change.

There are two enduring and damaging tyrannies in Aboriginal affairs as pointed out by Dave and Bess Price writing from within a Central Australian context. Firstly, 'a victim mythology

that leads to a tendency to blame all Aboriginal people's problems on white racist colonialism', and secondly, 'the absolute sanctity of culture', mediated by an 'army of spokespersons between the world and yapa who tell you what yapa can't do because of their culture.'<sup>40</sup> Yapa is a Central Australian term for an Aboriginal person. In Aboriginal affairs, if anything is certain today it is that governments cannot and will not provide the answers, and that the victim mentality mindset must shift if people are to get ahead. In this light, it seems ironic that Cape York Partnerships seeks to institutionalise race and revert to statism.

## **Conclusion**

When Martin Luther King stood on the steps of the Lincoln Memorial in Washington on 28 August 1963, to deliver his famous 'I Have A Dream' speech he extolled the virtues of equality based on life, liberty and the pursuit of happiness as decreed in the American Constitution. He spoke of a promissory note to blacks that came back marked 'Insufficient funds.' While the cheque had bounced his point about the nation's treatment of blacks was of principles that should apply to all people. The idea that Aboriginal people can create better futures or live usefully within the framework of a separate culture, economy and politics quite apart from real world influences is delusion for the vast majority.

In the secular world, an internal shift must occur for an alcoholic to change. In an ascetic world, these things are determined by external decree. In a democracy, we are all entitled to certain rights and freedoms. These include the right to choose our leaders, freedom of speech and freedom of choice. Our civil liberties enable us to pursue private interests free from political interference as long as these are legal, law abiding and do not infringe on others. Our historic task today if we are to have a better future than what we currently live is to build a strong civil society. Healthy, functioning, and self-sustaining communities are ultimately the only protection against gatekeepers and political interference from outside.

Taking a line through history, we ought to avoid authoritarianisms and separatisms. The straitjacket might be good for cults and sects of various kinds, but in 21<sup>st</sup> Century Australia, we have a tradition that recognises individual freedom, choice and difference. The will of the people and a nation should triumph over individuals or vested interests when democratic freedoms and our ethical and moral sensibilities are at stake. We are not all the same and our choices differ according to circumstances and interest. In a world of rapid change, as telecommunications, the Internet and travel technologies bring us closer together, the opportunities to expand horizons and ranges of interest will increase. We should not be trapped in further rounds of the 'community game' that might circumscribe and limit those opportunities.

We need a new language along with a new outlook to shift from the gloomy pessimism of blame, negativity and worst-case scenarios toward the positives about what is practically possible in an empowerment dialogue, and where corrective or compensatory inclusion is no longer a dominant theme. We need to eliminate gatekeepers and tear down artificial barriers that keep us apart because neither guilt nor innocence is particularly useful to sustain a movement to take us forward. In terms of shared futures the Reconciliation marches resonated with a

forward-looking, strategic sense of forgetting and remembering that may help define what we individually and collectively remember, and when, and likewise, what we forget and why.

After Martin Luther King, it follows that we should judge a man by the content of his character not the colour of his skin. This ties into the business about how we deconstruct race and do away with racisms in the process of reconciling our past and present with the future. To these ends and where Cape York is concerned, deconstructing Cape York Partnerships would be a useful start because whilst the emperor may have some clothes, they are surely made with cloth cut from some pretty dubious and synthetic fabric.

## Chapter notes

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# **The Most Threatened People in Australia: the Remote Aboriginal Minority**

**Steven Etherington**

It is difficult to overstate the domination of the most remote Aboriginal communities by non-Aboriginal Australians. We have taken over their lives, and we preoccupy all their thinking. It is a false hope that remote Aborigines are somehow pursuing their culture underground, despite our pervasive presence, or that the catastrophic absence of children from school reflects the fact that they are being secretly or at least privately instructed in Aboriginal culture.

Many are too far down the road with alcohol or drugs and unable to recapture cultural self-direction or transmission. Drunks cannot and will not submit to ceremonial learning and discipline. The non-drinkers, and the educated minority are overwhelmed by the needs around them. Remote Aboriginal people are often too busy with the daily grind of sheer survival to maintain their traditional lifestyle. They have been dragged onto the median strip of change and cannot go back. Most do not want to go back. But they cannot yet go forward either.

Providing the right kind of protection will eventually remove the need for protection. Slowing down the rate of exposure to the outside world allows people the time and space to set the degree and direction of integration. At present, the most remote Aborigines control neither. Aboriginal people want to integrate but they also desperately want control. While this may be naive on their part, so too are our contradictory beliefs that remote Aboriginal people are authentically and unchangingly indigenous yet are somehow able to deal, without our help, with the unstoppable incoming modernity. Proper protection buys time and builds skills and confidence.

## **A Personal Introduction**

I had the privilege of living in a traditional Aboriginal community for 23 years. Most of its people do not speak English, nor do they particularly wish to do so. I worked as an interpreter and translator in their language, sometimes living with them in traditional ways. That lifestyle is in a state of accelerating change, maybe faster and deeper than any society has ever experienced. However, traditional ideas, values and particularly traditional languages, remain. Older members of this society have moved from mission rations to cash economy and to debit cards in their lifetimes. They have moved from almost total isolation to mobile phones, from stories around campfires to DVDS, from small clan political structures to vast bureaucracies.

Although indigenous people make up less than two per cent of the Australian population, there is, within that small minority; an even smaller minority—tribal Aboriginal people in semi-traditional, non-English speaking communities. There are Aboriginal groups who live

relatively more integrated lifestyles and speak a variety of English. They often have a better grasp of the Australian mainstream system, having experienced decades of contact with the modern world. I do not mean to denigrate either the identity or the experience of the more integrated groups; I wish to focus on the particular needs of a sub-minority whose voice is simply unheard in public. Tribal Aborigines in Australia are a 'kept' people: they are no longer required to grow or find their own food, are never required to become educated, never required to build their own homes or buy their own vehicles. They are never required to accept global human rights standards, or even to adhere, in practice, to many of the laws of the state. Child abuse and domestic violence are tolerated among them (though not often by them) if the defence of traditional practice can be cited. There is no serious attempt to enforce the sending of children to school. The vast majority of adults are never required to learn anything, or to do anything. Erosion of the capacity for initiative and self-help are virtually complete.

Most adults spend a large part of their time drinking or playing cards, paid by some form of unemployment or social security benefit. Most buy food from take-away sections of the community shops. The majority do not cook meals regularly any more. They are not under any pressure to learn English beyond the basics needed to interact as dependants of the state. In even a remote community like the one I lived in, there is free medical care within ten minutes walk of each household. There is free primary and lower secondary education within ten minutes walk. There are financial incentives to attend. Staffing levels and consumables allowances in schools are possibly the best funded in Australia on a per capita basis. Yet the minority of children who do attend regularly under-achieve academically. Housing is overcrowded by mainstream standards but very cheap. All houses have water, sewerage and power. There is a regular garbage collection—yet there are continuing high rates of disease.

Alcoholism and attendant violence towards people and property are rampant. Many of the young men are abusing drugs. A majority of adult men are chronic drinkers. There are developing epidemics of kidney disease and mental illness. There are almost no 'real' jobs. It is in fact possible, and, in many Aboriginal communities, commonplace for an Aboriginal person to grow up without earning money or being held accountable for the way he spends it. Because of decades of this treatment, few Aboriginal people genuinely believe that they are responsible for their own welfare, health, housing or education or the education of their children. They have lost the mechanisms of traditional self-management. They have yet to learn the mechanisms for self-assertion and direction in the modern world.

Increasingly, outsiders only can do key jobs in each community. Typically, a community has a number of organisations run by powerful white people hiding behind token committees of Aboriginal people. These are government funded, often at loggerheads with one another, thus causing deep fragmentation across traditional clans and making a cohesive response by any local Aboriginal leadership almost impossible.

Sub-minority Aboriginal people feel spiritually defeated, left without self-esteem; they are denied any vision for the future. They feel intimidated by, and hopelessly underqualified by comparison with the mainstream who supply the expertise and money to make the laws, provide health care, education and financial services in English. Remote Aboriginal people no

longer have an image of themselves; they are no longer capable of running their own lives in any significant way.

Older remote Aboriginal people uniformly comment that their younger generation are doomed, morally and physically. There is little scope for cultural learning. Some major ceremonies have died out within the last decade because of widespread alcohol abuse. There is a grim humour aimed at managing the despair. They describe themselves in their jokes as always hiding from white people and failing in their attempts at 'white' employment. They laugh at the drunkenness of their men and their failure to manage interaction with the 'white' world. There are standard and effective systems of passive resistance to the wave after wave of white people who arrive with their agendas to help these communities. It looks like a sort of slow mass suicide. It also looks like a slow form of genocide by an irresistible and uncomprehending benevolence that will never allow people to learn from their own mistakes. The fear of white people is learned from earliest childhood. As each remote Aboriginal child grows up, a terrible feeling of comparative failure and incompetence adds to the problem.

There is an astonishing degree of cognitive dissonance in the broader Australian community about Aboriginal issues. We want to provide Aboriginal people with health, education and other services at the same level as enjoyed by mainstream Australians, but without altering their traditional values and practices. Clearly, we cannot do both. We want to provide Aboriginal people with the same levels of health care, housing and education as mainstream Australians, yet we say we oppose the (presumably rather woolly) notion of integration. The following examples illustrate some of our ambivalent ideas of the crucial problem areas we face in remote Aboriginal Australia:

- We want Aboriginal people to have the freedom to drink despite the genocidal impact of alcohol on remote communities. This, despite the strong voice of many Aboriginal organisations calling for a legislatively imposed control on their own peoples' drinking. We fund a variety of so-called harm minimisation schemes but we do not listen to this voice from the Aboriginal leadership.
- We want Aboriginal people to have equal access to school education, but we insist they continue to master their cultural learning. Yet, our education system, just like theirs, demands a full time involvement from the ages of five to at least 16.
- We believe that Aboriginal people have authentic indigenous knowledge at a high level. We also hope that they can somehow have appropriate knowledge to cope with mainstream inputs such as hygiene, budgeting money and taking part in mainstream political processes. We do not want to face the possibility that their knowledge of mainstream processes and structures may be just as limited as our knowledge of theirs. Our ignorance of their culture does not disadvantage us: their ignorance of ours is killing them.
- We want Aboriginal people to be able to take part in mainstream economic life, yet we want them to maintain what we imagine is their traditional lifestyle, which is so attractive to us. In fact, almost no Aboriginal people live an exclusively traditional lifestyle or even

want to, at least not without some modifications. Mainstream participation means, above all else, employment and employability. We put money into a wide range of band-aid projects and work for the dole schemes without making any serious attempt to provide career entry options. From remote Australia, it looks like we are trying to keep them out of the 'real' workforce.

- We want Aboriginal people to live 'authentically' but we want them to do this in modern housing. It is commonplace to blame the disease and social problems of remote Aboriginal communities on overcrowded housing, yet there is a strong element of choice in this high-density living. It is of course possible and necessary to meet this need by, for example, providing enough toilets and shower facilities on a number of people basis. However, rates of disease will not decrease unless knowledge of hygiene is well taught and the level of alcohol abuse is minimised. Behind much of the disease too is a fatalistic acceptance of poor health, which was not a traditional response, but a natural consequence of depressed self-esteem and despair.
- We want Aboriginal people to produce authentic indigenous art, yet we do not want them to face the extraordinary pressures for change that this industry brings. Our purchases dictate what they should paint and the media to be used. We create a tension between art-for-sale versus art as celebration or as pedagogy, or art as social or religious process. This is a form of enforced cultural prostitution. The costs in terms of spiritual and physical impact on artists is profound.
- We may have an unconscious desire to adopt the relationship with land the Aboriginal people enjoyed prior to white settlement. We want to feel some continuity with that longer, older title. Therefore we set up native title as a form of title for all of us, knowing that the Aboriginal people are not free to use native title land in any personal, economic way. This is one of the most difficult policy areas for the future as Aboriginal people discover the hidden poverty of their native title tenure.

## **Forms of White Control**

The issue of gender reveals some surprising problems in mainstream thinking about Aboriginal people. Aboriginal women suffer the highest rates of domestic violence in Australia. Yet, they have sometimes been asked to put up with such violence in order to protect their ethnic community from the abuse of racists. Do we entertain a kind of values dissonance here too, and on purely racist grounds? No one argues that any woman in mainstream society should remain silent against domestic abuse. Perhaps our desire to protect the generality of Aboriginal people from racist criticism is well motivated. But are the lives of Aboriginal women not more valuable than the reputations of some of their violent men?

Why do we not apply to race the same attitudes that we have to apply to gender in mainstream society? We have moved from a view of women as dependent, incapable of decision-making or employment outside the home, unlikely to benefit from further education and as being there mainly for us. Yet, we still readily think about Aboriginal people in exactly this discredited

way. Can we truthfully maintain this dissonance, deconstructing gender while reifying racial absolutes?

What happens when we, as a society, take these ambivalent attitudes and policies into the hearts of remote communities?

Often, white people do not realise what mechanisms of control they are using. We have induced a rational but destructive dependency characterised by rejection of personal accountability, a deeply depressed self-esteem and a total absence of power to control one's own life. Remote Aboriginal people no longer regard themselves as the prime stakeholders in their own lives outside their own immediate families, leaving themselves open to control by others. Non-English speaking Aborigines do not understand mainstream structures and processes, including basic democratic procedures and rights. We have intruded into their lives a vast system, run mainly through meeting and committee procedures, yet without ensuring anyone knows the fundamental controlling mechanisms of these procedures. We have brought them the West without the West's systems of accountability—insisting on the cultural translatability of everything except democratic processes.

Self-government without this basic understanding of democratic accountability is a sham. Without a core of people with at least lower secondary school education, self-administration is impossible and total reliance on white executives the norm. Obviously, anyone, Aboriginal or not, who does have power in the present situation is unlikely to work towards genuine democratisation for others.

Another major obstacle to genuine local self-government is the extraordinary level of fragmentation despite the small size of remote communities. Each Aboriginal enterprise or organisation has its own committee and sources of funding. In a community of, say 1,000 people, this can mean that five different groups absorb all the energies for community self-government, while removing any chance that there will be one central representative council. Typically there will be committees running local government councils, arts centres, outstations support organisations, clubs, land owners groups and so on. Remote Aboriginal people have radically disqualified themselves as stakeholders in their own lives. White control co-operates to perpetuate horror such as:

- A tutor in a theological college is being paid to help a middle-aged Aboriginal man with his English literacy. The man is on a board of a church organisation controlling a number of enterprises in Aboriginal communities. He can write his own name. He can write nothing else in either English or his own language. The tutor asks him if he wants to learn to read English in order to understand the paperwork sent to him from various government departments. He says he has no need to understand any of it.
- A group of Aboriginal members of a community council are sitting around outside the council building drinking tea while a number of white people argue over details of planning infrastructure in the community. I ask the Aboriginal council members what is going on. 'The white people are having an argument in there. It is nothing to do with us.'

- An Aboriginal man in a remote community describes his job at the council office as ‘signing cheques’. He can neither read nor write.
- In running courses which introduce non-Aboriginal people to the language and culture of the community where I lived, I had a keen middle-aged white student whose newly acquired job was to assemble traditional owners for meetings of the management board of a particular national park. The method he was required to follow involved bringing these remote area people together, paying some sitting fees in advance (most started drinking heavily), ensuring they were sobered up and available before the meeting the next day, at which point they were given copies of the agenda. The meetings were of course in English.
- It is common in non-English speaking Aboriginal communities for Aboriginal people to leave their credit cards and PIN numbers with trusted white people—shop managers, charter aircraft operators, outstation managers and so on.
- Few adults wear watches despite their daily lives needing to be co-ordinated with opening and closing times, travel and so on.
- Parents tell the school that if they want their children to attend classes, the teachers will have to come and get them because as parents they lack the authority to send them.
- An Aboriginal man murders an Aboriginal woman. There is no community reaction. A week later, some petrol sniffers break into the local club and steal grog. The white people who run the local council and the club call an urgent public meeting to discuss this latter crime.
- Because of alcohol abuse, two systems are widely used to control the situation: the threat of restricting access to alcohol and control over credit. (Often people drink up to the amount of their next social security or a Community Development Employment Program payment. Life is therefore lived on a fortnightly cycle of credit.)
- There is a kind of chronic and invisible poverty. A typical family may have a four-wheel drive vehicle for a while, as part of a mining company payout, but will be incapable of maintaining it.

Language is power. Literacy and spoken competence in English are fundamental prerequisites to participation in power structures and public discourse. Thus, there are two profoundly different groups across Aboriginal Australia—those who grow up speaking some variety of English as their first language and those who do not. Increasingly, the English skills in an individual or a whole community predict health, unemployment, educational and other social indices. Lack of access to health information, to legal processes and legislative processes are serious consequences of illiteracy or language deficiency. Decision-making in remote communities is usually under the direction of an English speaking non-Aboriginal person. Meetings are invariably conducted in English.

Aboriginal people realise this disadvantage, since they run headlong into English language issues daily. Why don't they simply learn English? Why don't they insist on translation into their own language? Real fear is involved in either choice. They certainly could learn English if motivated. Every remote Aboriginal school teaches English in some way. Most remote Aborigines are familiar with languages from other communities. Two factors prevent mastery of English. Firstly, school attendance is inadequate, and secondly, so many non-Aboriginal people are in their jobs in these small communities because they can operate in the English-speaking domain. Local people continue to depend on them as indispensable go-betweens.

In a similar way the small handful of Aboriginal people in these communities who do become relatively competent in English will be under enormous pressure from their own people to act as go betweens. More importantly, white people pressure them to act as spokespeople for Aboriginal people in dealing with the outside world. Most Aboriginal people reject the idea of becoming the English-speaking go-betweens because of the pressures the job brings. Similarly, those who become adept at translation/interpretation spend a great deal of their time at the behest of white decision makers or administrators with their inevitably urgent agendas.

Sometimes it is recommended that non-Aboriginal people should learn the local Aboriginal language appropriate to their workplace, in order to bridge the communication gap and provide background information usually inaccessible to non-English speakers. As someone who has done exactly that, I have to say that, even with this proficiency, non-Aboriginal people still leave remote Aboriginal communities dependent on their goodwill and the integrity of the non-Aboriginal advisers.

Far away from the centres and even the mechanisms of policy accountability, white powerholders have developed an almost completely impregnable system for managing the affairs of small Aboriginal communities. These methods provide protection for the whites who actually make the decisions. Whatever the organisation—liquor club, outstations resource centre, arts and crafts centre, local government council—its white managers set up an Aboriginal management committee, white management call the meetings and dictate the agenda. The Aboriginal people attend and may well have an occasional part in discussions. Minutes and all other paperwork are in English. When agreements are obtained, the meeting is finished and in most cases sitting fees paid. Should anyone outside the organisation attempt any criticism one of two things can be then be said: 'An Aboriginal committee has voted on this matter, any criticism will be therefore racist in motivation.' On the other hand, if a local Aboriginal person criticises the decision: 'Oh, you'll need to take this up with your countrymen on the committee who represent you.'

Many community organisations offer informal loans of money or vehicles to selected Aboriginal people. This patronage allows a good deal of manipulation of whatever Aboriginal opinion is expressed at any meetings.

In the late 1970s when our community was in the throes of decision-making about mining, I noticed a group of older primary school age children sitting in a circle (unusual in this community) with one of the girls standing up apparently haranguing the others, gesticulating



and obviously 'taking off' a white person. I asked them what they were doing. The girl standing said, 'We're playing 'meeting meeting', and I'm being the white person.' ('Meeting meeting' was in English, the rest in her language.)

In any week, in any remote Aboriginal community of less than a thousand people, there is likely to be one or more significant public meetings. Compare this to what you would expect in a comparable small white community. It is not unusual to have up to half a dozen of these 'events' in a week. These could be to talk about changes to the medical system; changes to alcohol availability regulations; changes to the school system; changes to Abstudy or other payments; the police and other 'heavywhites' angry about petrol sniffing or break-ins to the liquor club or someone wanting to recapture traditional bushfire practices in the interest of ecology. (All actual meeting topics in my experience). In nearly every case these are held at short notice, they are in English, they involve visiting experts and they are called to fit in with the club opening times. Attendance is poor, virtually nil, but since the majority of white people calling these meetings simply want to go through the motions of consultation, this is rarely a problem for them. Again, the Aboriginal people will appear to have acceded to a decision.

There are of course exclusively Aboriginal meetings in our community to plan ceremonies or discuss family matters. But for most remote community people the classic format is that white people pick you up; they make you listen to them. Often they harangue you and then ask your decision about things. This is universally and logically taken to mean the white person wants (in fact needs but this is not noticed) us to agree with him. Even in meetings where there are no white people present, the use of white power players as authorities, or their likelihood of providing funding or vehicles perhaps for a ceremony plays a part. Even in the most 'Aboriginal' areas of life, white power and money are brought into play.

Consultation with non-English speaking Aboriginal people is highly problematic and is usually replaced with discussions among white people who believe their pro-Aboriginal motivation will adequately compensate for the lack of real input from the real stakeholders. Often consultations are done in haste and in English. More seriously, government departments prefer to use an English speaking Aboriginal person to liaise with non-English speaking Aboriginal people who may well reject these intermediaries as being basically indistinguishable from white people at least in terms of their relative power (a far more relevant category than mere race). English is, of course, also a key defining factor, its associations displacing colour or some attempted pan-Aboriginal bonding.

Aboriginal men and women of integrity who struggle to provide leadership to their people battle stress-related illnesses and premature death. In the last decade, I have seen two Aboriginal spokespersons from our community die prematurely because of the impossible pressures imposed on them. One was a friend and colleague. We had team taught a bilingual class, gone hunting together, attended conferences together. He was poached from the school under pressure from both his Aboriginal family and the white administrators (a lot of good Aboriginal teachers leave schools for these positions). After a year in the job, he confided in me that he believed it would kill him within a year or two. It did. He drank himself to death

in his mid-forties. He worked from the community council building but was never given his own office. He was needed only for his signature. His family wanted him there to milk the system for them. There was no general support for a mentoring system; no one expected him to learn anything.

The forces at work in Aboriginal communities mean that people with leadership potential, and who manage not to become alcoholics, have to bear a disproportionate load. Middle-aged women often look after all their grandchildren on a full-time basis. We have lost most members of the generation between these two to alcohol. It is now a generation since most remote communities have seen a strong Aboriginal leader. The arrival of alcohol and the enforced, sudden and very premature move to self-management in communities ill-prepared for either, has meant the loss of a generation, now almost two generations, of Aboriginal leaders. There is no model for the younger adults to follow or build on. Overcoming this loss of momentum will be the core task of anyone emerging in the near future. Without major policy intervention, no one will.

Of course, most Aboriginal people are aware of the ethical and power issues confronting them, but their responses are constrained by deep-seated fear. Almost all remote Aboriginal people are conditioned from earliest age to be fearful of white people. The threat of white people is used to discipline children. This threat is credible because there are always white people around of the type who will actually use physical force and threats to coerce Aboriginal behaviour. I know of police using an Aboriginal police assistant to bash brutally local people, and I have heard white people use threats of violence against uncooperative Aborigines. Many white people in remote communities are armed. Well within living memory, there have been instances of shots fired at and dogs set upon Aboriginal people.

In addition, there are other fears. Given the disguised poverty of radical unemployability, there is always the reasonable fear of alienating a co-operative white person with his resources like phones, car, advice, advocacy or loans. Given the lack of education, there is the reasonable fear of upsetting white people who can help with paperwork and legal advice. The low self-esteem of Aboriginal people ensures their tolerance of white abuses of power. An Aboriginal man who later became his community's council president once told me: 'Look. You white people control the government, you have the police, the Federal government, the army, the legal profession, the hospital system, the schools, the shops and the banks. What on earth can we do?' Feelings of inadequacy become self-fulfilling; they worsen as time goes on and no one is there to break the mould and set an example of independent leadership.

Mutual exploitation is normal in the turbulence of remote frontier contact. A kind of mutual patronage exists, where Aboriginal people tend to stake a claim on a newly arrived white person, cultivating a good relationship for mutual support. Much corruption in remote communities begins with informal loans, use of phones, credit, vehicles or signatures on time sheets. This secures for the white person some Aboriginal support against other white people who may want to move him/her out of a job. A well-cultivated white person may be used against another white person in conflict situations—a daily scenario in remote communities where none of the Aboriginal people is willing or (at least in their own view) able to confront

a white person with whom they have some issue to resolve. Almost invariably, a white 'friend' will help in this context, full of self-righteousness at having taken the part of the Aboriginal person, blissfully unaware that the same thing may be happening with his white opponent. Constant reliance on white allies undermines legitimate local leadership.

Money flows into these communities from multiple sources. It is usually some non-Aboriginal person's full-time specialist job in a remote Aboriginal organisation to master the multiple sources of funding and processes for application. Funding comes via CDEP programmes, Commonwealth Family and Community Services and NT FaCS, Health Services, Northern Land Council, Legal Aid, Women's Legal Service, Education, mining company community support funding, trust funds, Land Associations, ATSIC, and others, not necessarily exclusively Aboriginal grants within health and education departments. In every case, the process of applying, spending and managing the books for these funds requires advanced mainstream literacy and numeracy skills. Sober, socially aware Aborigines are invited into positions funded by these organisations, and are often involved simultaneously in working with white people in several projects and with several organisations. This form of pseudo-leadership, or at least of pseudo-representation, also leads to burn out. A real example is the way in which women's legal groups have begun to work with remote Aboriginal women. No initiative could be more welcome, but visiting non-Aboriginal lawyers need local Aboriginal people to liaise with the community. They arrange for those local women to attend workshops and courses, taking them away from the families and the women they are protecting in the community. This adds to their pressures, putting them in the position of the 'meat in the sandwich', in this case, between the legal groups and some of the men of their own community.

White people in remote communities react in a range of ways to the isolation and corruption of their work. Some are good people who gradually burn out or leave in disgust. Others would not be readily employable in mainstream positions of responsibility but find they become 'larger fish' in remote 'ponds'. They soon find ways to exploit the lack of accountability from outside, the lack of knowledge of rights within the community, and the fear driven accommodation of the 'signature men'.

What is happening now looks very much like what missionaries did in earlier generations, except for the fact that contemporary paternalists or secular missionaries are better funded. They are also less able to explain the failure of their determination to encourage development. As Aboriginal dependency deepens and whites are less accountable to them or to the government for the application of funds, well-meaning policies for development in Aboriginal contexts are more likely to fail. Unless attention is paid to the delivery end, the mechanisms for failure will remain potent. We will continue to wonder why well-motivated schemes end in disaster.

The missionaries who developed the first outstations or homelands centres did so in response to Aboriginal people needing to return from artificially created 'feeding centres' to their original homelands. Typically, these are many kilometres removed from even small Aboriginal towns, in the most isolated parts of Australia. The original motivations were to escape the pressures of alcohol and the pressures of contact with the outside world. The intention was to allow for a greater degree of self-government, and to provide a buffer as Aboriginal people were drawn

inexorably into contact with more and more areas of mainstream life. The more than 30-year-old history of homeland centres has been complex, with funding gradually growing and more non-Aboriginal 'support' personnel being needed. As outstations have proliferated, the original rationale for their existence has been dramatically altered. Outstation communities may now be the most blatant example of spiritual destruction caused by uncontrolled, well-funded, white 'benevolence'.

We have unintentionally created a group of people who are allowed or required to be on permanent holiday at these centres without any meaningful employment, with visiting white staff. In a typical outstation there will be anywhere between half a dozen and fifty or, rarely, a hundred or more people, depending on the time of year, mainly from one family or clan. Houses and other buildings are new. Water supply, power supply, aircraft access to medical services, microwave ovens, phones and TV, schooling are all provided. Previous generations of these people had lived in these places in traditional ways. There has been no attempt to provide an appropriate, lesser, level of infrastructure. Toilets and housing demand a 'Europeanization' of even remote bush lifestyle.

More significantly, the isolation masks some abuses. There is effectively no compulsory schooling between short visits from white teachers flown in. There is a built-in protection (through isolation) for sexual abuse and neglect of women and children. There is little evidence of systematic cultural learning or practices, except exploitative magic or the usual recreational hunting of any group of humans with spare time in a remote environment. Most people spend a great part of the day playing cards or driving back and forth between the outstation and the nearest shop or alcohol outlet. This kind of publicly supported pseudo-traditional lifestyle bears only the most superficial resemblance to pre-contact way of life. It is producing unemployable people capable only of living in an artificial economic environment.

It is an extraordinary irony that whereas Aboriginal people had originally hoped outstations would manage the rate and depth of impact on their lives of the outside world, we have now funded, taken over and thereby controlled their homelands centres. We have likewise provided jobs for white advisers and workers, further excluding Aboriginal people from even this most relevant part of the workforce. Seizing some sort of self-direction and self-reliance in homelands centres has been made extraordinarily difficult for remote Aborigines.

The Australian mainstream has only begun exploring what work for the dole schemes may entail, and whether they will provide what we hope. In many remote Aboriginal communities, this vast social experiment has been running for several years as the Community Development Employment Project (CDEP). Some of the white people administering these programs see their role as eventually putting every Aboriginal person in each remote community into a CDEP-funded position. There are serious problems yet to be addressed. In many cases, CDEP programmes have produced effective training and increased employability, *despite*, not because of, the way the whole program is set up and administered. An urgent, broad and very public review is needed. It is morally offensive enough that we have conducted this experiment on remote Aboriginal people without genuinely informed consent. We must now take stock.

The great danger is that CDEP will be accepted as 'this is as good as it gets' and that this will shut out any further long term thinking about employment options for remote Australia. Nevertheless, the problems are potentially disastrous. The CDEP:

- Prolongs dependency by keeping people in non-career type jobs with dole level salaries at best. We are disguising a profound economic dependency, making 'salaried beggars' who can never hope to move upwards in employment terms. Unemployment benefits would be more honest.
- Is administered by ATSIC, which means major reports and decisions are not readily accountable to the public, with both the Minister and ATSIC able to shift the blame and claim powerlessness.
- Jobs are typically about funding people to provide services that the rest of Australia do as private volunteers: looking after old people, night patrols to intervene with young people on drugs, dealing with family violence. In our mainstream Year of the Volunteer, it is extraordinary that this sort of erosion of initiative and self-reliance can receive public funding for wages.
- Sets unacceptably low goals for children to aim for.
- Control in a community is always with a white administrator, either present or absent; local people are sometimes given administrative roles as 'middle men' thus creating a kind of artificially empowered group within the community.
- White people (with real jobs) almost always provide training for CDEP workers and this further discourages self-image among their Aboriginal clients.
- Does not provide a real range of choices for employment, although with an appropriate Federal employment policy this could be addressed.

The need is for a major review starting with the honest declaration that CDEP is masking long-term underemployment and unemployability. What makes CDEP attractive as a policy for remote communities, Aboriginal or not, is that it is a much easier option than the creation of genuine employment.

### **Recommendations About Principles and Structures**

Present policies are creating a disaster in remote Aboriginal Australia. I have argued that we need to re-assess current policy in terms of how it affects the remote sub-minority communities. These recommendations are based on a series of mental pictures I have of real life people: Patrina, a 14-year-old girl beaten by her 30-year-old husband with a hammer because she said 'no'. Anna, a 37-year-old grandmother of three kicked in the face by her husband because she was slow to fetch him a smoke. Paula, a 15-year-old girl given as payment to a man in his sixties as a ceremonial fine paid to prevent violence against her mother. The intelligent young men without high school education overusing marijuana while they wait to turn 18 and start

drinking. The schoolchild who to the question what his Daddy did for a living said, matter of factly, 'He drinks'. The pre-teens with venereal disease. Young men clinically depressed because they cannot even hope to find real jobs. Intelligent, gifted people intimidated and controlled by some white person of such marginal competence as to be unemployable in the mainstream. I want policies for these people.

Debate on remote Aboriginal Australia has become federalised, and our policy and legislative responses must be federalised exploiting their legitimate power to shield those who need protection. The urgent and broad nature of these policy problems will demand a bipartisan concord and a lot of political will and courage. We must re-establish the Commonwealth Department of Aboriginal Affairs as an agency. It should provide protection where appropriate to vulnerable groups, encourage accountability and a sense of responsibility. It should monitor needs at the ground level. This may involve restructuring of both ATSIC and other federal structures so that different effective policies can be applied to the distinct needs of the sub-minority group. Treating all Aboriginal Australians as having the same needs has seriously and systematically disadvantaged the remote Aboriginal people.

Almost every remote Aboriginal person is cynical about both the Land Councils and especially about ATSIC. From their viewpoint, these mainstream, white organisations cannot represent them and yet wield significant power in their lives. Indeed, ATSIC appears to have been set up to fail in many of its roles beyond providing mainstream Australia with an Aboriginal reference group. Remote Aboriginal viewpoints should be reviewed and listened to without these being mediated through ATSIC. Any structural overhaul should at least separate groups needing on-going protection from others represented more adequately by ATSIC who may be hampered by that same protection.

Create a corps of Aboriginal Community Advocacy Officers within Aboriginal Affairs, to provide auditing of decisions and expenditure at local community level. I have argued that the locus of failure for our policies is at the ground level. All other recommendations depend for their effectiveness on the possibility of controlling and monitoring funding at the remote point of application. There is a strong case to create a division under the Federal minister with power to:

- Require a review of decisions made where Aboriginal people have not been given enough information to make informed decisions or give informed consent, requiring a secret ballot vote if needed (run by the Electoral Commission if necessary). Informed consent will be one of the major issues in the next decade for remote communities, in areas of health, mining negotiations, schooling and local government;
- Respond as ombudsmen to requests and complaints from Aboriginal people about local applications of Federal funds, for example through homelands resource centres or local government councils;
- Assess and report on outcomes where projects are created to provide employment and training either on the job or in schools. Lack of close accountability allows self-

congratulatory reports on projects and expenditures, often at their launch, without any independent check listed assessment of effectiveness;

- Bring in accountants and lawyers where corruption is suspected, developing an approach that could use methods other than potentially high profile court procedures which may well involve Aboriginal as well as white offenders;
- Prosecute administrators who make decisions knowing that the consent obtained from a local committee was not adequately informed consent;
- Provide an independent assessment of community views on alcohol availability and support local alcohol control initiatives;
- Sponsor the employment of local Aborigines within remote communities;
- Sponsor an effective mentoring system so that white people in remote communities have monitored, contractual obligations to provide on-the-job training aimed at their own replacement by local people;
- Develop an appropriate way to re-centralise community decision-making, re-uniting the currently fragmented forms of self-government. This could involve legislation to create a Federally-supported form of local self-government in remote communities.

These proposals are intended to break the power of those with de facto control of much of community life in remote Australia. More importantly, we would allow space and mechanisms for the development of confident Aboriginal leadership. Attacking current fragmentation and insisting on systematic accountability both require Federal level impetus. Both are essential for the redevelopment of remote Aboriginal leadership.

## **Recommendations About Health**

The provision of health services in remote Aboriginal Australia provides the irresistible challenge to some fundamental premises of traditional thinking. There are tensions between supernatural versus medical causes of illness, and between the individual as the primary stakeholder in his/her own health versus the magic men/women as the prime power brokers in health. There is increasing tension between the need to provide excellent western health care and the worsening dependency that assumes white people have become the prime stakeholders in Aboriginal health.

In trying to combat this, and for other less worthy reasons, there has been some attempt to devolve health administration to local communities in the hope that this will lead to local people 'owning' their health systems. In fact, we are simply reinforcing in Aboriginal people a feeling of inadequacy. The NT government set up 'health boards' in local Aboriginal communities when most of us would consider it ridiculous to devolve similar responsibilities to a small white country town with the same number of people—with the power to make

policy, hire and fire staff and so on. Failure has been general, if not widely admitted. Imposing structures where there is no attitude or skill to drive them is not the way to recover stakeholder self-awareness and self-confidence.

There is a strong link between the lack of general educational success, particularly English literacy, and many of the health problems in remote Australia. A budget allocation specifically targeted to provide public health education in remote communities would be cost-effective, as compared with the many ad hoc programs that occur now. Low self-esteem and literacy levels, coupled with general health unawareness leads to unwillingness for people to look after their own well-being. This is a serious area of dependency and needs to be addressed alongside the provision of factual material on hygiene, immunization and so forth.

In practice, community health education must be in local languages and it will be most effective to combine all public health education issues under one budget, to include education on AIDS, women's health, issues about babies and children (including parental responsibilities under mainstream law), diabetes and so forth.

Funding for nurse/health educator positions for each staffed school (paralleling the arrangement in the NT, where some larger schools have school constables) would be effective in raising the levels of child health and educational performance often affected by chronic and untreated illnesses. This position would also link children to health care who may otherwise fall through the net where parents are dysfunctional. Some role in educating parents as to their responsibilities and rights would be crucial.

Increased support to Aboriginal groups fighting alcohol and drugs in their communities should come under the health budget rather than being funded through either special grants or CDEP. This would ensure it is regarded as significant, and is related to community health in the broadest way and not merely an employment scheme or self-policing scheme, with the unfortunate associations involved.

Mental health is a more urgent concern than is yet widely realised. In each remote Aboriginal community there is a steadily enlarging group of young men suffering mental illnesses. Many do not present for diagnosis or treatment. Diagnosis and treatment are often quite problematic given the language difficulties, resistance to treatment among the sufferers and limited medical personnel and knowledge of the issues.

Abuse of drugs, the psychological impact of dependency and unemployment, almost universal educational failure, depression and anger over adult role model failure are all factors. Many of these young men become violent, many are simply deeply depressed. Suicide rates are rising. Often the medical response is management by drugs, because of the sheer impossibility of adequate counselling in the cross-language-culture situation. Aboriginal health budgeting will need to be increased to allow for urgent research on what amounts to an unfolding epidemic, and to fund more psychiatric specialists and community-based mental health workers.



## **Recommendations About Alcohol**

If Australia has a 'too hard basket' for policy issues, it must contain each of unemployment, Aboriginal issues and alcohol. They all come together in remote Aboriginal communities. The Federal Government should support communities in pursuing a policy of allowing them to declare them alcohol-free. This could only be developed in co-operation with state and territory organisations and would need to come out of an extensive survey of what is actually happening at present. Despite various small-scale harm minimisation initiatives, alcohol is implicated in most of the disastrous domestic violence and abuse statistics across remote Australia. It reinforces Aboriginal self-image problems and unemployability and diverts household income away from children. All this is on a significantly greater scale than in other social groups in Australia. Despite the political difficulties of highlighting this issue, it is one of the crucial points at which the cycle of social dysfunction might be broken for some people. Alcohol has this pervasive impact in remote Aboriginal communities, even when they are 'dry', since this only means that alcohol cannot be brought in without a permit. There are 'dry' communities with local liquor clubs opening twice daily six days weekly. There, a majority of adult men are chronic drinkers. Almost without exception, Aborigines in remote areas speak in favour of tighter controls over their own access to drink, often proposing race-based, or community-based laws that are in breach of racial discrimination principles. Local level Federal advocates could insist on liquor management systems that paid attention to local community demands.

## **Recommendations About Education**

Education in remote Aboriginal communities does not reflect the needs and desires of Aboriginal parents. Neither does it equip Aboriginal students to enter the workforce as either tertiary or TAFE graduates. There is a general failure to gain English literacy, learn mainstream structures and law, mathematical and other technical competencies and even knowledge of indigenous languages and culture. This multiple failure guarantees that Aboriginal children can anticipate a lifetime of unemployability and radical dependency, with the inevitable accompanying domestic violence and substance abuse.

School failure is cyclical, as children without adequate schooling tend to repeat their failure in their own children. Teachers are not attracted to remote schools because of the atmosphere of failure. Success depends on employing the best teachers. A teacher needs to build an effective relationship with both children and adults to bridge the obvious barriers of race and language. Only the best teachers should ever be sent to this most demanding educational context. New teachers are being sent to remote areas; they are usually full of goodwill towards Aboriginal people in the abstract, but very inexperienced as teachers in their own mainstream culture. Typically, such teachers explain and approaches behavioural and learning issues as 'Aboriginal'. Seeing an eight-year-old boy doing what all eight year olds do, the tendency is to explain it as 'cultural'. Some experience in teaching in their own culture would empower them to know better and act to discipline or instruct the child, as he/she needs at that age. Instead, these inexperienced mentors commit the fallacy of racial difference, and step back, disqualifying themselves from any sort of cultural intervention (as they think of it). More tragically, they also tend to accept lower standards and expectations for Aboriginal children. This perplexes the child, who has

suddenly come across an adult incapable of adult interaction with him. Eventually, the teacher becomes dispirited and angry, inevitably citing part of his/her failure to the appalling attitudes to attendance. Every teacher, either Aboriginal or white, nominates poor school attendance as both their biggest frustration and the fundamental cause for educational failure. In a typical remote school, a class might attract four out of twenty children enrolled on one day, twelve the next, but not including the four from the day before—and so on, week after week. Staff turnover is very high. Often, housing, remoteness or isolation is blamed for this. Teachers mostly leave out of the sheer disappointment of seeing children lose any chance of realising their potential.

There has been a frustratingly slow growth in the number of Aboriginal people working long term in remote schools, despite the fact that these schools often provide the only career employment available in their communities. The most competent are too busy intervening in the problems surrounding them, or are taken away to become ‘signature’ people. This means that there are usually only a very few formally trained Aboriginal staff, which then creates the need for white teachers to provide mentor type training to their local colleagues. Again, only teachers with successful experience in their own mainstream practice will have credibility, confidence or competence to interact with Aboriginal staff without being paternalistic. More importantly, experienced mainstream teachers understand the utterly indispensable role of parents, and the complex nature of the relationships between school and community, and could work with Aboriginal staff to re-involve parents as the prime stakeholders in their children’s schooling. This will provide the most effective attack on poor attendance. Children have the right to compulsory education.

There is evidence that, increasingly, Aboriginal people from remote communities are now sending their children to boarding schools, often in centres thousands of kilometres from home. This emerging phenomenon needs immediate research. It looks like remote Aboriginal parents are beginning to exercise a choice for their children and are trying to equip them to deal with the mainstream society.

In 24 years of talking with Aboriginal parents about education issues, the most repeated idea I have encountered is the desire that children learn English and other skills needed to deal with the outside world. This is seen as the responsibility of the school, leaving teaching about cultural issues for the home and the community outside. This is almost a universal view among remote community parents.

The efforts of these parents need our support. The concept of a weekdays-only boarding facility or supported household facility in the community should be seriously considered. Where parents and children show a commitment to primary education, the children could be provided with such support to become educationally and socially better prepared for a more distant high school. These supervised local boarding households would also provide English skills in an immersion environment without severing the child violently from its community. We have lost a generation of leaders, and this proposal recognises that the earlier generations of leadership in remote Australia had benefited from boarding experience built on what was then a sheltered and relatively intense English language primary schooling where missions protected the communities from outside pressures, and attendance was enforced.

## Recommendations About Employment

Is it possible to provide access to mainstream employment in remote communities given the mix of educational failure, history and isolation? What has been tried and failed? Virtually every well-motivated program on Aboriginal communities has worsened the crisis of unemployability and despairingly low self-esteem. Mostly, the model behind the project is an unexamined version of 'development', invariably leaving out the need for the community to adapt at a survivable pace. For example, it seemed like a long overdue reform when a sewerage system was installed at one top end NT community. The eleven Aboriginal men who had been employed managing the pan toilet system were instantly rendered unemployed when two white people with appropriate engineering skills moved into the community to manage the pumps and other technical details. Hygiene levels and associated rates of infection of children have not improved. The existence of plumbing does not create knowledge of hygiene. Communities have seen experienced Aboriginal builders and equipment operators put out of work by rising literacy competency requirements. Nepotism among white people with jobs is rife, with family members brought in to fill vacancies. Sometimes, vacancies are created to employ them.

I have argued for a local level presence in the form of an Aboriginal Affairs advocate/ombudsman. One role for this position would be ensuring that local Aboriginal people fill jobs in remote communities wherever possible. Federal legislation allowing employment of people with experience or competence but without mainstream formal qualifications would enable re-employment of some experienced Aboriginal people.

It is also essential to monitor and assess training schemes for Aboriginal people and employment provided by mining companies, CDEP schemes, Community Councils and so on, rewarding or penalising entities on the basis of actual graduate numbers and quality rather than on proposed course enrolments.

To move beyond sheltered forms of employment, pseudo-employment and underemployment, CDEP needs to be replaced or supplemented with some form of government underwritten scheme, structured for real employment. We need to think quite radically about what is possible, challenging the stereotypically rural employment roles for Aboriginal people. Remote communities could, without increasing the overall number of white people involved, move into electronic, printing and tourist industries. Even some 'industrial' industries such as supplying concrete for building could be localised.

This is the most urgent and probably the most expensive Aboriginal policy need. The expense may well be less than the cost of letting things go, or of trying to create jobs in urban areas for Aboriginal people who would have to be moved from remote areas to work, with the resulting personal and social disaster.

We need to anticipate some obstacles from within and outside communities to development of employment in remote locations:

- Exercising more control over alcohol availability (for example, banning working hours and opening times of liquor outlets) would be politically problematic, despite support for this from the great majority of people, even the drinkers, in remote communities.
- More difficult is tackling the self-disqualification of Aboriginal people with either no workplace experience, or with experience only in artificial work environments like CDEP. There are many, particularly younger Aboriginal adults, who say they would prefer a real job rather than either CDEP or unemployment benefits.
- Legislated support is needed so that government bodies would be able to prefer remote industries and suppliers with some limited contracts—for example, allowing a printery in a remote community to handle non-urgent jobs.

Change depends on the quality of white staff in mentoring and advisory roles. This is an area where Federal power needs to be employed to prevent corruption and to ensure good people are attracted to remote locations. Federal Aboriginal Affairs should provide an employment/recruiting service for jobs in remote communities. This would provide the sort of advertising, screening and monitoring that are all well beyond the capability of most remote area local groups. It would prevent the sort of uncontrolled invasion going on now.

The escalating tragedy of these communities will only be addressed when mainstream Australia works in a politically bipartisan way to sort out its goals for this vulnerable minority. Things will improve only when accountability and rigorous control over policy implementation are applied at the local, small community level. The problems now, at last, being reported from these communities are evidence that we have removed protection too quickly. The absence of a systematic departmental advocacy has meant, not self-determination, but exploitation and the descent of communities into fear and cyclical failure.

This unfolding disaster in remote Aboriginal Australia has become our unavoidable responsibility as a nation. None of us is adequate to this task, but we need to act radically and quickly, regardless of personal discomfort. Our policies should start saving people in remote Aboriginal communities from meaningless and abused lives. We should devise policies to empower, genuinely, and truly, this most vulnerable group in our nation.



# ‘This Is As Much As We Can Do’: Aboriginal Domestic Violence

Stephanie Jarrett

Rights and rules that are universally formulated and thus blind to differences of race, culture, gender, age, or disability, perpetuate rather than undermine oppression.<sup>1</sup>

I think that for Aboriginal people, the quicker they shed traditional ways and ideas about cultural restoration, the better it is for the well-being of Aboriginal women and families, at least in terms of violence norms.<sup>2</sup>

## Introduction

For liberalism, the possessor of fundamental human rights is the individual. One’s class, gender, culture, and location do not transcend this, because these items do not affect the essence of the ‘individual’, and the rights individuals need to live as human beings. However, Australian liberal-democratic states are experiencing difficulties in upholding the universal rights of Aboriginal women who are victims of Aboriginal domestic violence.

There is an ongoing debate surrounding how to restore Aboriginal well-being in the context of their cultural fragmentation and past policy mistakes. ‘Cultural rights’ advocates argue that Aboriginal people will endure high rates of social pathology until they re-establish a greater level of their culture, identity, and determination of Aboriginal affairs.<sup>3</sup> Opponents argue that idealism surrounding ‘cultural rights’ and Aboriginal autonomy results in inappropriate government non-intervention, thereby exacerbating rather than ameliorating Aboriginal alienation and violence.<sup>4</sup>

‘Cultural rights’ and Aboriginal autonomy have increasingly prevailed since Prime Minister William McMahon pronounced soon after the 1967 referendum that Aboriginal people should be encouraged to ‘manage their own affairs’.<sup>5</sup> Policies and legal reforms to overcome Aboriginal disadvantage based on recognising rights associated with being Aboriginal are advocated in such influential documents and structures as the National Report of the Royal Commission into Aboriginal Deaths in Custody,<sup>6</sup> the Council for Aboriginal Reconciliation,<sup>7</sup> the Aboriginal and Torres Strait Islander Commission (ATSIC) Bill of 1988,<sup>8</sup> ATSIC itself,<sup>9</sup> as well as interpretations of the Mabo decision<sup>10</sup> and formal Aboriginal demands such as the Barunga statement.<sup>11</sup>

Pro-‘cultural rights’ assumes that continuing white control over Aboriginal affairs and institutional non-recognition of indigenous special rights and needs are major causes of Aboriginal suffering today. While ‘cultural rights’ proponents acknowledge that differences in history, location, and loss of tradition should be considered, they regard that the causes of Aboriginal social malaise are generalised, and that the solutions of greater Aboriginal autonomy and recognition of Aboriginal cultural rights are broadly applicable.

During these decades of policy emphasis on Aboriginal autonomy, Aboriginal domestic violence has remained much higher than the non-Aboriginal rate, and effective responses elusive.<sup>12</sup> A central problem is an assumption that optimal Aboriginal policy requires reducing state control over formulation and implementation of Aboriginal policies and programs. Responses to Aboriginal domestic violence are attempted within broader Aboriginal policy contexts and politicised Aboriginal settings, which insist upon Aboriginal autonomy, and over which state domestic violence policymakers and implementers have little control.

Certainly, Aboriginal domestic violence intervention needs to be culturally appropriate to be effective. Policies and programs based on the liberal principle of equal treatment can be inflexible, resulting in Aboriginal resistance to their use or service resentment and burnout when Aboriginal people use mainstream services differently. However, at the other extreme, attempts at ‘cultural appropriateness’ can become ‘cultural rights’, whatever the initial program intention. Promising programs can be lost through this process, particularly if they require a level of white involvement or control that threatens those seeking ‘cultural rights’ or Aboriginal control. Australia’s liberal-democracy is struggling to establish a moderate adaptation of effective domestic violence programs to indigenous Australians. It is yet to lay claim adequately to a multicultural middle ground, wherein universal principles are extended by customising but not compromising them to different, Aboriginal, settings.

### **A Violent Social Milieu**

In Australia, ‘cultural rights’ is a guideline for Aboriginal domestic violence policy, in the belief that Aboriginal individual and community social health is enhanced by a self-determined, distinct Aboriginal cultural identity. This is not self-evident. One’s culture is not an *a priori* benefit to an individual in all settings. The African-American scholar Thomas Sowell argues that factors internal to a group’s culture can be definitive in enhancing or limiting the life chances of its members. He also argues that policy-makers are more comfortable in addressing inhibitors to social and economic well-being that are external to, rather than arise from within, a group’s culture.<sup>13</sup>

A problem confronting states seeking to uphold both Aboriginal individuals’ rights and respect ‘cultural rights’, is that Aboriginal ‘cultural’ settings frequently have an underdeveloped notion of the individual right to physical safety. Whatever the origins of Aboriginal cultures, the pervasiveness of negative behaviours, including everyday reinforcement of violence, signal that Aboriginal domestic violence is part of a largely self-generating, alienated social setting. In these settings, violence is commonly regarded as ‘natural’ and acceptable rather than aberrant.<sup>14</sup>

A higher Aboriginal tolerance of violence is evident in a number of ways. At an Aboriginal women’s venue in one regional centre, the weekend’s violence was noted to be a regular ‘amusing’ topic of conversation and spectator entertainment. These stories<sup>15</sup> told by young Aboriginal women triggered laughter among their listeners:

Did you see ‘Frank’ with his front teeth missing from some fight?—he looks real funny! (laughs all round)—he probably got it by going after someone else’s woman I reckon!

'Angela' was in the front seat—she was drunk, arguing, fighting with 'Fred' while he drove the car! Then they crashed the car because of her arguing and fighting! Crashed into some building and now someone's in hospital!

Such enjoyment is evident among older professional Aboriginal women as well. A mature-age, tertiary-educated professional Aboriginal woman of some status related the following to an amused group of Aboriginal women:

Did you see those two black girls fighting over John—he looked pretty pleased about it too! (laughs) The whites were in the fights in a big way too on Saturday night weren't they! What about the big argument between the 'Point Steele' and local players! Oooh!! The blacks though were really into it that night weren't they! (laughs) Plenty of fighting that night outside the pub! Me and my husband watched it from our car!

Higher acceptance is evident in the annoyance among some Aboriginal people regarding white people's intolerance of violence. One Aboriginal woman's expression of resentment of white entertainers' intolerance of violence at an Aboriginal nightclub is telling here:

Those disc jockeys and bands at our cabaret stop playing, pack up and leave, when a fight breaks out—pretty petty heh!? They should choose DJs and bands who don't mind the fights.

Justification of violence against women is commonplace. The following event was related by a young Aboriginal mother to other Aboriginal women:

'Pete' threw boiling water over 'Mia' on the weekend! She got just what she deserves too, leaving three such pretty little girls like that. I'd do the same myself to her!

Another Aboriginal woman justified a case of rape when introducing her brother-in-law to me:

This is my brother-in-law. I'm giving him all the care I can give him, as he's just got out of gaol because of a rape charge. But I don't think this was fair. There were three men involved in the act, but the girl, well, she was one of those sluts and you couldn't call what happened to her rape. It's not fair that he got charged with rape.

These conversations indicate that among these Aboriginal people, violence is an acceptable consequence, a just outcome and corrector, for a range of human relationship transgressions. Violence's consequence—physical injury—is less likely to generate expressions of compassion for the victim, and more likely to engender support for male perpetrators. Non-Aboriginal professionals with Aboriginal clients also observed this heightened acceptance of violence and support for male perpetrators. One white professional, 'Jean', related the following experience of one young domestic violence victim:



Close female relatives of the perpetrator—tertiary-educated professional women they were, too—were very condemnatory of her for using the shelter and hence showing their brother up to be a bad man, and also saw it as her fault that he was violent to her, and that she deserved it for being a poor housekeeper... They all rallied around their brother, offering to put him up, look after the kids, and make sure he didn't lose the home. And they seem to be condoning what he does, supporting him in his violence.

'Jean' has not found such family support for perpetrators among white Viewtowners:

I've never seen such rallying to the defence of the perpetrator among white families.

Jean also found the severity of violence among her Aboriginal clients to be typically worse:

The differences between Aboriginal and non-Aboriginal domestic violence are horrific. With whites, the violence is mild. Even emotional violence is considered 'the end of the world' for many whites... Physical violence is present in at least 50 per cent of Aboriginal couples, probably more, and a lot of Aboriginal people are confused about domestic violence as they think that their culture says that a man has a right to control women. Both Aboriginal men and women believe this, and the attitude 'she probably deserved it anyway' is widespread among the Aboriginal population.

A young white woman with long-term friendships with Aboriginal townspeople made a telling observation:

The Aboriginal attitude to domestic violence, especially when it is a case of a man against a woman, is about the woman being under the man. The women often walk behind the man. And when you hear Aboriginal people gossip about beatings against a woman, you often hear them say 'she deserved what she got.' You hear this kind of talking frequently among them. Also you often see Aboriginal men in public places talk really nicely to outsiders, and then turn directly to their wives and speak to them like shit...

### **From Individual to Group Rights?**

Given this tolerance for violence, the view 'victims get what they deserved', and concern for Aboriginal male status and well-being, Aboriginal oppositions to domestic violence are likely to be inadequate. For responses to be effective, the state is obliged to initiate and implement intervention to alter this Aboriginal 'cultural' milieu. However, the pervasive, 'crash through or crash' commitment to Aboriginal autonomy inhibits even expressing the idea that a difficult cultural milieu renders external intervention imperative. Instead, policy-makers' and implementers' responses to Aboriginal domestic violence are either determined by, or must struggle to overcome, the restrictive political and policy settings presented by Aboriginal demands for autonomy.

Embedded in these restrictions is a philosophical problem for liberal-democracy and domestic violence policy—that the principle of indigenous group autonomy implies a redefinition of the basic unit for the receipt of a right. This redefinition is akin to previous limits on the extension of liberal rights to women in the home. In this earlier limit, the female individual person's access to state protection of this right was thwarted by the idea of a private family unit, headed and protected by the male as husband and father. By recognising specialised, 'cultural rights' through the granting of Aboriginal autonomy, liberalism risks creating a new private realm of Aboriginality, outside the purview of liberalism and its principle of universal rights. Much as Locke's treatise on women's 'natural subjection' left women outside the political sphere<sup>16</sup> 'cultural rights' carry the risk of placing Aboriginal victims of domestic violence outside the scope of state intervention.

Hence, if an Aboriginal group nominates a feature of their social life, and this could include domestic violence, as a defining aspect of their culture, or if an Aboriginal group should nominate control over responses to a problem such as domestic violence as their 'cultural right', then group members' individual rights would necessarily receive contingent status. This is so, irrespective of the extent to which Aboriginal domestic violence is traditionally-derived or recently-developed. This is primarily because the principle of 'cultural rights' bestows on the group itself, the 'right' to define and assess their 'culture'. It is on this philosophical level that the guardedness of government responses to Aboriginal domestic violence initially arises. The result is limited intervention, policy neglect and failure.

### **Mainstream Institutions, Aboriginal Difference, and 'Cultural Rights'**

In Australia, two forms of inhibited response to Aboriginal domestic violence within mainstream services are under-adaptation and over-adaptation to Aboriginal difference—both part of the 'same-different' spectrum of problems in Aboriginal policy-making.<sup>17</sup> The first form manifests as failure to adapt services to meet the 'different' needs of Aboriginal clients. Mainstream counselling and support group services tend to have little interface with Aboriginal clientele, primarily due to lack of service adaptation. Over-adaptation arises when Aboriginal cultural rights' and autonomy principles control responses. In one region's courts of law, 'cultural rights' was reported by a lawyer to be an effective partial defence for domestic violence:

Lawyers will plead with the judge to consider culture. This is used by lawyers to mitigate the sentence. For example, serious violence will get a suspended sentence instead of imprisonment. This is possible with perhaps 25 per cent of cases in Viewtown, and they will be put on bonds or similar for violence. An Aboriginal man who is more integrated, say, a professional, wouldn't be able to use such a plea. A man may be able to successfully plead 'culture' if he was, say, on CDEP, been in Viewtown for two or so years, and was from a more tribal area before that.

Despite having concerns about these trends, the same lawyer adhered to the institutional principles of the legal profession within liberal-democracy—to utilise whatever legal redress is available to reduce a sentence for a client:

I am a professional who will act on behalf of any client, including male perpetrators.  
I have no problem with that. I use what legal tools there are to defend my clients.  
That is my profession.

In this process, freedom from physical assault is not fully recognised as a universal human right, but becomes contingent upon the cultural context of the perpetrator. The principle of the individual as moral agency, subject to the usual consequences of law, is compromised here. Aboriginality thereby becomes an effective filter for the transmission of rights.

Some mainstream adaptations to Aboriginal 'difference' entail limits to their effectiveness. Indeed, the delineation between an adaptation that enhances or compromises Aboriginal victim safety is not always clear. The RCADC principle that cultural considerations be part of police decisions regarding arrest<sup>18</sup> coincides in one locality with an increase in Aboriginal victim calls for police help, but also a decline in arrest rates for cases of Aboriginal violence. Thus, changes in policing Aboriginal domestic violence may be both improved and compromised by 'cultural rights' axioms.

Some mainstream institutions resist adaptations to Aboriginal 'difference' to safeguard Aboriginal victims. Aboriginal demands for greater leniency for perpetrators, and pressure from male service providers to increase access of violent Aboriginal men to partners, were resisted by one women's shelter. While this resistance is well-founded, it may reduce Aboriginal use of the shelter, inadvertently compromising Aboriginal victim safety.

On the 'cultural rights' principle of white non-interference, some mainstream institutions do not 'interfere' when Aboriginal people fail to engage with potentially effective programs. White professionals in a crime prevention program lamented the limited Aboriginal uptake of opportunities to run self-managed anti-violence programs. However, interference is never warranted:

Our responsibility as whites to Aboriginal programs is to never interfere, to support what they want, and if we see that one of their programs is not working, we have no rights to impose things on a community. Imposing disempowers people.

Mainstream services need to replace the principle of 'cultural rights' with an approach that can address cultural issues within Aboriginal populations. It is inescapable that effective 'additional responses' to Aboriginal domestic violence require intervention into the very 'culture' of Aboriginal social life. In such a setting, the concept of a 'culturally appropriate response' takes on a very specific and politically demanding meaning.

### **Human Rights: A Victim's Free Choice?**

Indigenous Peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the state.<sup>19</sup>

In the context of 'cultural rights' advocacy, the democratic principle of 'free choice' is evoked as a solution to upholding liberal or universal human rights principles, while allowing individuals to participate freely in minority cultures that do not recognise such principles.<sup>20</sup> The United Nations Draft Declaration on the Rights of Indigenous Peoples, in the above quotation, incorporates the principle of 'choice' in this manner.

In his critique of cultural relativist responses to female circumcision, Steven James argues that in some societies, the cultural imperative of female circumcision renders unworkable the idea of girls' free choice as validating the practice on universal human rights grounds. Her choice not to have the operation entails significant, frequently harsh, social and economic consequences, and is thus not a free choice.<sup>21</sup>

Free choice to leave a violent partner is frequently unavailable to domestic violence victims without external support, including changes to cultural norms that legitimise victimisation.<sup>22</sup> The idea of individual's free choice while their groups culture remains immune from external intervention is an unworkable human rights 'solution' regarding Aboriginal domestic violence.

Aboriginal victim resistance to prevention is a key inhibitor to effective intervention. Exacerbating factors such as alcohol, drugs, and financial conflicts are higher among Aboriginal clients, signalling the deeper enmeshment of Aboriginal domestic violence within a setting of greater alienation and destructive behaviour.<sup>23</sup> Intervention into Aboriginal households is more confined to dealing with the moment of a domestic violence crisis. For Aboriginal women, their immersion in, perhaps embodiment of, a different set of mores, compromises their ability to choose interventions which bring about longer-term protection.

Compared to white women, Aboriginal women are less dependent on men for access to finance and housing. On this practical, financial level—regarded as a critical factor inhibiting escape<sup>24</sup>—it should be easier for Aboriginal women to leave. Hence, 'culture' as limiting choice to leave is probably more critical for Aboriginal women. Indeed indications are that assertion of a 'different culture' may increasingly serve as strategy of last resort to hold Aboriginal women to their violent male partners.

There is a human need for group or family belonging, and escape for Aboriginal victims could involve a too-painful sundering of this. A 'cultural rights' position ensures that for many Aboriginal women, the choice remains a more painful and potentially more dangerous one, that of staying in a physically perilous relationship endorsed by its cultural context, or leaving one's partner and cultural group to secure physical safety. The heightened normalcy of violence within Aboriginal populations renders Aboriginal victims even less likely to aspire to freedom from violence, further limiting their ability to choose.

From a 'victim rights'—and hence, a state responsibility—perspective, intervening into the victims' cultural group to render it less violent is a benign option, rather than an act of 'cultural chauvinism'. Above all, advocacy of government non-interference in non-liberal Aboriginal practices, as long as individual Aboriginal members have free choice to participate or not,<sup>25</sup>

is untenable as a solution to Aboriginal domestic violence. Guaranteeing individual rights in situations of restricted victim choice obliges liberal-democratic states to increase commitment to intervention. Within liberal-democracies, the primary obligation of guaranteeing individual rights resides with the state, not the individual. In addition, while the 'equality of cultures' may be a valuable concept, to be compatible with individual rights, it needs to be circumscribed by state systems committed to non-negotiable, universal, human rights, rather than to the potentially unfettered concept of a 'cultural right'. James' qualification of cultural equality is useful here:

Ironically, this form of cultural relativism could sanction as moral the predominant opinion in any locality ... (and) prevail whether or not there is any good reason to support it.<sup>26</sup>

James' argument can be directly applied to Australia's 'Benthamite' emphasis on majority will over human rights,<sup>27</sup> manifested in the reliance on Aboriginal representation and consultation in Aboriginal policymaking. Prevailing norms and power relations, not victim rights, are likely to determine agendas here.

There are thus critical limits to victim choice and consultation as 'solutions' to the problem of assisting Aboriginal victims while avoiding cultural intervention. Without these 'solutions', the liberal-democratic state faces more difficult policy options. Cultural intervention is essential to victim choice. However, such intervention remains in contradiction to prevailing principles of cultural rights and Aboriginal autonomy.

### **Aboriginal Autonomy and Service Provision**

Australia's policymakers have the task of extending domestic violence responses into an increasingly differentiating, culturally more assertive, Aboriginal setting. While they acknowledge that some Aboriginal clients prefer white service providers, policymakers believe that reducing white management and white staff renders Aboriginal services more effective in meeting Aboriginal clients' needs.<sup>28</sup> This belief is resulting in a failure to tackle problems located within the very processes of Aboriginal autonomy: Aboriginalisation, self-management, and separate spaces.

Aboriginalisation and self-management are problematic settings for developing effective responses to Aboriginal social problems. Aboriginal staff have trouble due to cultural', 'localist', and family demands and restrictions emanating from the Aboriginal population.<sup>29</sup> Aboriginal workers themselves speak of how Aboriginal townspeople rank each other according to family belonging, place of origin, length of stay, and behaviour. Even for conscientious, professional Aboriginal workers, family expectations and inter-family conflicts can impinge on their attempts to provide effective services. The following lament of a young man from a large 'local' prominent Aboriginal family is illustrative here:

I quit my job... because the issue of 'family' made it almost impossible for me to operate as a service provider. My own family made it extremely difficult. They interpreted my role as obligating me to use my position to drive them in the work

car around all day on all sorts of errands and when I refused it upset them... It was even harder working for families that I didn't belong to... The pity is I really loved my job, I really did, I really love work.

Aboriginal 'non-locals' frequently face resentment for getting jobs which locals say should go to 'locals'. One Aboriginal female service provider, considered 'non-local' as she lived in the town for 'only' 16 years, spoke about it thus:

They make life hell for me in the workplace and elsewhere. It's very hard to cope with at times. People around me in this building and in the community deeply resent that a 'local' doesn't have my job ... I hear all the rumours that go on about me all the time, that a 'local' should have got my job, that it's not right that I'm here.

Another Aboriginal worker spoke about the impact of localism and nepotism on service delivery:

There's just so many things that need to get done for the people here, but it's only a few families who get the jobs: it's who you know, not whether you can do the job, that counts here... Aboriginal people here keep you right out of participating in the running of things if you don't agree with the opinions of the main families ... this means that nothing much gets done, little changes for the better ...

Nepotist and localist versus merit-based staff selection are more likely to succeed under Aboriginal self-management. Non-aboriginal intervention can be crucial to ensuring that Aboriginal applicants are selected on merit-based criteria. This intervention maximises the quality of Aboriginal workers. In the words of one white service provider:

I play a crucial role to ensure that hiring of staff does not occur on 'family' and 'local' grounds. For example, when the appointment for an Aboriginal (executive position) was made, the Management Committee were not going to appoint the best candidate on the grounds that she was not local (even though she's been here for 15 years)... I had to fight very hard to ensure that she got the job which she did, and she's good at her job too.

In one location, a reported high turnover of Aboriginal staff and problems of commitment among Aboriginal workers further challenge the Aboriginal autonomy ideal for domestic violence intervention. Two white employees of an Aboriginal service tell their own experiences:

They lack: what's the word? the dedication to the work needed to be done among their own people. Work just doesn't seem to have the same meaning for them... It's very stressful. I have to spend a lot of my time just getting them to do the work.

The Aboriginal staff are forever going to conferences. In this town, Aboriginal conference-going is part of a 'can't-settle' problem, of spreading their time thinly across several venues ...

This lack of Aboriginal commitment to a single job or future direction ... means that too great a percentage of time and resources must be invested in recruiting and retraining staff.

Workplace problems also arise from demographic fact of too few skilled Aboriginal people, who thus attempt to spread their needed skills too widely. Whatever the origins of these problems, alienated, troubled peoples are unlikely to produce from their own ranks, the number of professionals needed for effective intervention into their own population's problems.

This is a mirror image of white 'institutional racism', where mainstream practices are said to fail Aboriginal people because they are ill-adapted to Aboriginal needs.<sup>30</sup> Instead, non-Aboriginal staff find it imperative to extend mainstream work practices to Aboriginal workers, to uphold the needs of vulnerable Aboriginal clients. The shedding of white staff in the name of Aboriginalisation and self-management can result in under-monitoring, poor prioritisation of services, and jeopardise Aboriginal client welfare by removing essential expertise on the sole basis that the possessor of that expertise happens to be white.

Client access to services is also jeopardised by nepotism and localism associated with self-managed Aboriginal services. A white service provider noted the distress caused by prevalent exclusion processes. At an Aboriginal group therapy program—a promising program undermined by the loss of this same service provider through Aboriginalisation—Aboriginal participants:

expressed a deep sense of loneliness, of non-community ... Powerful families are in a position to delineate who the community is and isn't on the basis of who and who is not local and these definitions are not fixed but operate on an emotive rather than rational basis ... For instance, one family is being told that it has no rights to welfare services by people in that organisation whose families came here later than the family seeking assistance.

Perhaps the most serious problem facing self-managed Aboriginal domestic violence services is that among Aboriginal professionals, there is a troubling lack of support for victims, and a tendency to sympathise with the perpetrator. The following perspective of an Aboriginal woman professional embodies this:

I would never go to the Women's Shelter myself if I was a domestic violence victim. They totally paint the male as a bad, violent criminal. Fair enough if we want to go there to leave a bad marriage. But I've dealt with clients that I know aren't violent—never committed any robberies, never hurt anyone—and all of a sudden his partner has gone to the Shelter and accuses him of being a violent criminal! What goes on at the Shelter for her to be saying that? It's no good—the Shelter should be working to reconcile the differences.

A white policy-maker's story is also telling here. It raises the question of who is really benefiting from Aboriginal control of domestic violence services:

How did your talk at the Aboriginal women's shelter go, 'Christine'?

It went pretty well, but we were told by Aboriginal women that it should have been done by Aboriginal women.

Which Aboriginal women said that?—not their names, but what positions, what status did they hold?

Oh, the Aboriginal women who objected were all bureaucrats, working in government departments.

What did the Aboriginal women who received the talk themselves think of your talk?

Oh, they loved it! They were very positive and enthusiastic about the talk. None of the staff had told them about the cycle of domestic violence or anything. The women were keen to hear about this and other issues. What shocked me more though was that the (all-Aboriginal) staff of the shelter believed that the women must have done something to deserve to be bashed by their partners. That is, they were blaming the women for being bashed! This is pretty surprising. But it would still be better if it was an Aboriginal woman who was teaching them about the cycle of violence rather than me I think it would have more impact coming from an Aboriginal person than from a white.

It is difficult to envisage how effective Aboriginal domestic violence programs can be implemented in self-managed services without significant external intervention and monitoring. However, Aboriginal autonomy leads to a reduction in external involvement.

## **Aboriginal Autonomy and Violence**

The autonomy ideal of separate identity formation risks reinforcing violence as part of Aboriginal social life. For Aboriginal townspeople, key reference points for an Aboriginal identity renaissance can be the more traditionally intact Aboriginal cultures with disturbing forms of male violence against women. One service provider outlined his observations with much richness and insight:

In my conversations with the traditional Aboriginal prison inmates, I have discovered that the Aboriginal traditional community in the (nearby hinterland) is very male-dominant. I have heard talk of men's right to crack women's skulls if they as much as utter certain male-only terms, especially when they are drunk. That is, when the men are sober, other conditioners are able to work in preventing the violence, but when they are drunk, these other barriers are reduced and there's an increase in the traditional rights as the main determinant of the action. The result is that terrible violence against women occurs ...



Other professionals also reported higher violence among more traditional, less urban Aboriginal populations. One professional argued that Aboriginal townspeople's roots in traditional hinterlands maintain their higher toleration of violence. For this reason, she surmised:

They have a real problem about culture here. They want to restore their well-being, and see this to involve a revival of Aboriginal culture. I think that for Aboriginal people, the quicker they shed traditional ways and ideas about cultural restoration, the better it is for the well-being of Aboriginal women and families, at least in terms of violence norms.

An Aboriginal woman's observations support these perspectives:

You should go to 'Sandytown' to see how Aboriginal people really live ... Blacks are hurting each other all the time in 'Sandytown', because there they are more tribal many are just starting to come into town there, and are not used to the different life. They are at a different stage of transition to us here in Viewtown.

Separate identity formation also threatens neighbourhood race relations. Positive race relations can be a significant source of safety for Aboriginal domestic violence victims. In the year of fieldwork, an estimated 20 per cent of Aboriginal domestic violence cases were reported to police via Aboriginal people seeking help from a white neighbour. However, the more violent behaviour among Aboriginal people—almost certainly exacerbated by the process of separatism—has a direct impact on white neighbours and on race relations.

Even white families committed to anti-racism are struggling here. 'Margaret' is a well-educated, middle-class woman committed to social justice and an abhorrence of racism. Her daughter's recently developed racist attitude to Aboriginal people is very disturbing to Margaret. Margaret also understands why her daughter has become racist:

I'm very concerned about how racist my daughter has become. She even calls them 'boongs' now. I had to transfer my daughter out of the public high school because of the behaviour of the Aboriginal students. It got really bad in fourth year when for no apparent reason it was 'let's get 'Louise' day', just because she's white and pretty I suppose. So when she was alone in the toilets a group of Aboriginal girls ambushed and bashed her up. Now my daughter hates Aboriginal people.

A basic expectation of the liberal-democratic social contract, that its laws and mores are held by enough members to maintain a modicum of physical safety, is being threatened by Aboriginal separatism. 'Cultural rights' is an unworkable concept because it fails to consider racial interdependence—an interdependence that in some locations, affects the very minutiae of everyday life of Aboriginal and non-Aboriginal people.

A suggested limit to Aboriginal autonomy—that the rights of non-members be considered—offers scope to outside intervention while still recognising Aboriginal 'cultural rights'.<sup>31</sup> However, given indications that Aboriginal domestic violence is shifting from public space to

the home, resulting in less immediate influences among the wider population, this 'solution' holds particular perils for Aboriginal victims.

## Homelands

One epitome of the Aboriginal 'separate space' is the homeland. The homelands movement, primarily an Aboriginal initiative, fulfils Reconciliation ideals about how governments should respond to Aboriginal aspirations of self-determination, cultural revival, and access to land. Australian states are generally supportive of homelands. In a 1987 Federal government report, homelands benefits are so described:

... significant social and other benefits are emerging through the homelands movement as Aboriginal people, who establish on traditional lands, are better placed to develop and adapt to a lifestyle which gives them a greater say in the interface between Aboriginal culture and the non-Aboriginal society.<sup>32</sup>

The RCADC argues that traditional or historically significant lands, including homelands, are an essential part of counteracting the harm done to Aboriginal family and community by colonisation. Hence, meeting Aboriginal 'land needs' is crucial to reducing Aboriginal arrest rates.<sup>33</sup> Drawing on Marcia Langton's submission, the RCADC writes of '(t)he necessity for Aboriginal people to retain ties to land, or 'country', in order to maintain the 'welfare' of Aboriginal society'.<sup>34</sup> While it acknowledges that access to land would take different forms and degrees of intact traditional associations, the basic premise that social benefits arise from separate Aboriginal community lands is not questioned.<sup>35</sup>

However, some of the tensions and visions surrounding homelands signal warnings. Homelands are unlikely to eliminate family conflict. Indeed, they can maintain present gender and other conflicts and introduce new ones, rendering Aboriginal domestic violence even more prevalent. In one location, homelands offer to individuals a significant source of material benefit and power. There are no longer commonly held traditional or other rules regarding the wielding of power and wealth, so family contests over authority arise. One Aboriginal woman laments:

My family has a claim in but it causes lots of arguments. See, my sister is married to a white man, and he wants to put pigs on the homeland. But we don't want pigs on it. And anyway, what right does he have to say what is going on the homeland? He's a Whitey! So he can't have a say over what happens on the homelands of his wife's family!

Such problems are not confined to pre-establishment, with chronic conflict on one homeland over rights to authority. A male elder protests:

It's no good for me and my own direct line at the moment ... and there's bad feeling between me and my two brothers over this, plenty of bad feeling over there!... My two brothers' children, they think they can make all the rules because they live on the homeland permanently. But the elders, and there are 10 of us, should be equal

bosses; with equal rights to pass on the land's houses to our own direct bloodlines. None of this sideways takeover which is happening now. Because we don't live there permanently, my own children and grandchildren haven't got right of access anymore to the houses there!

A white service provider reported widespread homeland-associated conflict:

'Homelands' is already having a big effect on family conflict here. It is causing a huge volume of conflict between families over which families have rights to funding and which don't. It's also creating a huge volume of dispute within families. This occurs in some families around the fact that husbands and wives come from different families with planned or present homelands in very different locations ... There is one family that I know of where the husband and wife have actually split. The woman wanted to shift to her family's homeland, and the man didn't want to and the arguments between them included a lot of physical violence by the man against the woman ...

In other families ... only one of the partners wants to actually shift to the homeland and the other wants to stay in Viewtown for work or education or just prefers city life ...

But Aboriginal people that are for the homelands talk about it as getting back family unity, for healing.

Oh yes! Of course that's what's said! That's the ideal, the dream about homelands. But the reality of homelands is very different from that dream.

These examples evoke a people who are culturally heterogeneous, indeed divided, on a number of fronts. Even within families, there are fractious ties across racial lines, conflicting aspirations to stay or leave mainstream society, and little consensus on basic economic and social guidelines for the family homeland. They seem to lack a modicum of unifying cultural 'glue' necessary to avoid chronic conflict and to establish a reasonably harmonious group life that might be deemed worthy of 'group' or 'cultural rights' consideration.

Homelands are likely to undermine 'community' as a basis of service provision to Aboriginal townspeople. In the words of one Aboriginal man:

Because of the closed community here in Viewtown, homelands is in some ways another aspect of the local community trying to keep everything that's going, such as land, housing, and other services, for whom they classify as local. We're not all one people you see Stephanie. I thought the colour of my skin was enough, but no ...

Another Aboriginal man, despite his involvement in homeland funding negotiations and his own family's bid for homeland funding, expressed serious concerns about homeland implications for community-based service provision:

Homelands tend to emphasise family rather than community, with each homeland family attempting to get funds for services on their own homeland ... Homelands will tend to draw funding away from centralised services to the point that centralised services established for all the community become starved of funds and threatened thus with contraction or collapse ... This may result in families languishing away from the towns on their own property, under-serviced and in squalor perhaps like in times past, just the sort of thing we want to avoid, that we've been working to move away from.

The experience of one family portrays how homelands emphasise family over community in another way:

My father came to this town 16 years ago. He was a good worker in mainstream Viewtown, and was the main driving force behind the setting up of the Aboriginal Housing Unit here. But he was the first to acquire homelands money in Viewtown too. This upset the other Aboriginal families very much as we weren't considered local, being here for only 16 years. And Viewtown Aboriginal Association actually voted us out of the community, voted that we were non-members of the community!

These homeland trends present difficult policy issues for governments committed to protecting Aboriginal victims. Indeed, domestic violence victims are over-represented in the group of Aboriginal people least likely to benefit from trends away from community and towns, and towards family-based homelands. There are several reasons for this.

Firstly, homelands' isolation presents several problems. Homelands' cultural isolation will reduce the likelihood that Aboriginal victims will choose to escape. Homelands' geographic isolation will reduce victim access to services and increase offender control over victims. Conversely, homelands can provide escape for perpetrators.<sup>36</sup> A young Aboriginal mother explains:

There's less domestic and other violence among the Aboriginals of Viewtown than in other places I've lived before, because there's no nearby mission or outstation<sup>37</sup> that they can escape to here. Here they have to try to get along with each other and with whites as there's not much escape from each other. They can't just storm into town and out again like they do in Darwin, Alice Springs and Port Augusta.

Secondly, homelands' potential to channel funding away from town-based housing could compromise Aboriginal domestic violence victims' access to safe emergency housing. In particular, Aboriginal women's present empowerment through state-controlled and Aboriginal-based housing policies risks being lost through homeland family-controlled housing arrangements, with clear impacts for domestic violence victims.

Thirdly, thinner dispersal of Aboriginal housing and welfare funds between town and homeland may increase domestic violence in both locations, due to increased family finance and housing stress.

Governments have some chance of extending liberal-democratic attitudes about physical safety and human rights to town-based Aboriginal populations moving towards community and pan-Aboriginality. Prevailing political forces are pushing Aboriginal social relations in opposite, more problematic directions: to fragmented, locality- and family-derived identities. Likely negative consequences for Aboriginal domestic violence victims are manifold. Aboriginal domestic violence on family 'homelands' may be particularly immune from outside intervention, on the 'cultural rights' grounds of Aboriginal entitlement to choose autonomy, free from mainstream contingencies. In the words of one Aboriginal woman:

Homelands for me means a place where families can be together more independently from white ways and white law, where we will have more control over our family lives, and gain control back over our children. It will be a healing place, give us all a chance to heal. Now, we can't discipline our kids. The government will cry 'child abuse' if we belt our kids, but it never did our kids any harm.

These homeland issues throw critical light onto the RCADC's assessment of land rights and economic self-sufficiency in restoring Aboriginal well-being. The RCADC quotes: 'We (Kooris) are making a deliberate attempt to live our own lives and not to be dependent or responsive to government'.<sup>38</sup> The RCADC harnessed this evidence to illustrate how meeting land needs is likely to reduce Aboriginal arrest rates. However, it is unlikely to happen because homelands reduce social ills as expected by the RCADC. Homelands places Aboriginal violence further from the reach of state laws and the liberal-democratic norms upon which these laws are based.

### **Individual Rights and Cultural Rights in Opposition**

The recent affirmation in the Australian Declaration Towards Reconciliation of cultural recognition, land needs and self-determination mean that Aboriginal victims of domestic violence are at risk of remaining hostages to 'cultural rights'.<sup>39</sup> This is a non-liberal situation, and thus presents no philosophical dilemma for liberal-democratic states committed to securing the universal right of safety for Aboriginal victims. The problem facing liberal-democratic states is a more pragmatic one.

There are indications that the cross-cultural point—where committed non-Aboriginal professionals play key roles in developing specialised programs for their Aboriginal clients—is where effective programs for Aboriginal victims are most likely to emerge. To maximise Aboriginal victim safety, these cross-cultural programs work with rather than idealise Aboriginal difference. However, the continuing policy climate, which encourages racial difference, threatens the viability of such cross-cultural programs. That such programs do not conform to Aboriginal autonomy criteria of shedding white staff renders them particularly vulnerable. For Aboriginal domestic violence intervention to be effective, it needs to be supported by policy axioms that encourage Aboriginal integration rather than differentiation. The urgency and conundrum is that prevailing Aboriginal differentiation entails a diminution of state legitimacy and ability to implement the necessary policy changes.

Human rights are broadly applicable, and, philosophically, at least, cannot be conditioned by the application of 'cultural rights'. By grappling with a minority population's dynamics on the local level, this study exposes the philosophical fallacy in assuming that 'group' or 'cultural rights' inevitably benefit the least powerful members of a minority group, such as its domestic violence victims. Above all, it calls for unwavering rather than reluctant state intervention into Aboriginal domestic violence, so that Aboriginal victims can lay claim to their human right to physical safety.

## Chapter notes

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- 31 Brennan in Fletcher, 1994, 94-5.
- 32 House of Representatives Standing Committee on Aboriginal Affairs, 1987. *Return to Country: the Aboriginal Homelands Movement in Australia*, Canberra: AGPS, 76.
- 33 NRRCADC, 1991. Vol 2, 467. The RCADC prefers the term 'lands needs' to 'land rights', to capture the sense that Aboriginal people need land to restore their individual, family, and community well-being.
- 34 NRRCADC, 1991. Vol 2, p. 471.
- 35 Though the RCADC does admit that its confidence in this process is derived primarily from positive outcomes of Northern Territory land rights legislation—ch. 37 in Vol. 5.
- 36 Coorey, L. 1992. 'A Rural Perspective on Domestic Violence', in *National Domestic Violence Education Program (NDVEP), Discussion and Resource Kit for use in Rural and Isolated Communities*, updated by the National Committee on Violence Against Women, Office of the Status of Women, Department of the Prime Minister and Cabinet, 25-30; Nolan, C. 1992. 'Domestic Violence in Country Areas of Australia', in *NDVEP*, 19-24.
- 37 'Outstation' is another term for homeland.
- 38 NRRCADC, 1991, Vol. 2, 474.
- 39 Council for Aboriginal Reconciliation, 2000. *Australian Declaration Towards Reconciliation*, May.

## **Are We Headed in the Right Direction?**

**Helen McLaughlin**

The difficulties faced by the citizens of the Aboriginal town of Doomadgee in north-west Queensland are the subject of frequent media reports. Doomadgee is located on the banks of the Nicholson River. In the dry season, the river's chains of stunningly beautiful lagoons create a marvellous habitat for waterfowl and other birds and animals. Travellers driving west across the ford on the Gulf Savannah highway would stop on the high western bank to view the beauty of the river and its abundant wildlife. Regrettably, the bare, eroded parking area on this bank is strewn with rubbish, empty beer cans, broken alcohol bottles, the discarded silver bladders and cardboard cartons from empty wine casks and soiled disposable baby napkins. The small service centre is unkempt, and wretched. Mangy dogs, suffering various deformities, the results of untended, unimaginable injuries lie disconsolately in the dust, too ill or too enervated even to move out of the way of passers-by. The people appear sad and dispirited.

This town is in an ideal position for travellers to break their journey. It is close to Lawn Hill National Park in the south and many popular fishing camps on the Gulf to the north. It would not take a great deal of imagination or effort to establish a very inviting park with comfortable facilities and a roadhouse to attract the travelling public which is quite substantial in the dry season. Although seasonal, due to the heavy summer rains and flooding, six months of enterprise would offer the community an opportunity for jobs and to build pride in their town.

This example highlights the general failure of the majority of indigenous-specific programs to meet the needs of the people. In most cases, indigenous people are encouraged to access separate programs and live isolated from the mainstream. The supporters of this philosophy fail to accept the similarities, but emphasise the differences between indigenous and non-indigenous peoples. Isolating indigenous people and developing programs for their advancement separately from the mainstream has not worked to their advantage. This has limited the interaction and sharing of ideas and the capacity to work together to overcome the challenges that all people face in isolated parts of Australia. The problems related to isolation and environment that have to be solved to run successful enterprises in remote Australia are the same, no matter what your race.

The problems of Doomadgee are reflected in countless other communities. How did it come to be like this?

### **Commonwealth Programs for Indigenous Australians since 1967**

Without doubt, the questions concerning the provision of program funds, specifically identified for the benefit of indigenous people have been the centre of much debate over



the past 30 years or so, particularly since the 1967 referendum. The debate has rarely been other than controversial but the time is long overdue for a more moderate and thoughtful discussion. Some see no reason for specific assistance for indigenous Australians, while others believe that designated funding should be increased. There are those too who consider that the allocation of all funds should be totally controlled by indigenous organisations such as the Aboriginal and Torres Strait Islander Commission (ATSIC).

Issues of accountability have been raised regularly since the establishment of the Department of Aboriginal Affairs in 1972, not only by Governments but also by indigenous people themselves. The amounts allocated are significant. \$2.3 billion was allocated to indigenous-specific programs in the 2000/2001 financial year [\$3.5 billion in 2007] and of this approximately 75 per cent was specifically earmarked for programs aimed at improving the standard of living of indigenous Australians<sup>1</sup>. Whenever stories of distressed communities are presented in the media, the inevitable question follows 'Where has all the money gone?' There is a sense within government and throughout both the indigenous and the wider communities that more should have been achieved given the level of expenditure over the years. Great concern is expressed continually about the slow rate of progress in achieving an equitable standard of living for indigenous Australians.

In March 2001, the Chairman of ATSIC, Geoff Clark, drew the government's attention to the need to ensure that all government policies must reflect the values and priorities of indigenous people, and assistance should be based on recognition and respect for their rights<sup>2</sup>. Few would argue with the broad thrust of these sentiments and would agree that such considerations should guide policy makers in their efforts to address the needs of all Australian citizens. Programs that do not take into account the values and priorities of any group of beneficiaries and which do not respect their rights as human beings and citizens are unlikely to produce results.

However, ATSIC is asking for a fundamental shift in overall policy direction. The suggestion is that proposals that are supposed to assist indigenous beneficiaries, in reality, merely reflect Ministerial or Departmental priorities. There is adequate evidence to suggest that the reasons for many of these policy decisions are based on the need to address the continuing dysfunction in indigenous communities. ATSIC states that it is not legitimate for governments to identify needs, provide funds to address them and urge indigenous people to accept the proposals. ATSIC asks 'Are any of these urgings anything more than the self-interested demands of self-styled 'winners' urging, self-denial on the 'losers'?'<sup>3</sup>

ATSIC is very clear that 'the objective of obtaining recognition of rights that flow from Aboriginal and Torres Strait Islander peoples' status as indigenous peoples has long been a priority of the first order'<sup>4</sup>. ATSIC tries to create the impression that it stands outside any budget negotiations, and is not given the opportunity to put its case to Government. That is simply not true. ATSIC is required to submit its Budget proposals to the responsible Minister in the same way as other Commonwealth agencies are expected to do. By using simplistic and emotive arguments, it is easy to misrepresent the Commonwealth Budget process and avoid the need for honest debate about the legitimate role of Government in the allocation of public

monies and the administration of Aboriginal affairs. Many of these emotive arguments also conveniently overlook the fact that the government of the day is ultimately accountable to the taxpayer, indigenous taxpayers included.

ATSIC is seeking recognition of two types of rights, citizenship rights 'and special and additional rights that flow from being the indigenous peoples of Australia'<sup>5</sup>. Some would suggest that the real purpose of providing specific programs is to ensure that a certain level of funding is dedicated expressly for the benefit of indigenous recipients, in the hope that at some time in the future, the need for these special programs will be eliminated. Others, like ATSIC believe that specific program funding is but one element in a wider raft of demands with the objective of achieving separate development.

The question of whether separate development, based on ethnicity, would be more successful than integrated development needs to be addressed. Even a brief preliminary examination of the various considerations surrounding the provision of funding for Aboriginal and Torres Strait Islander programs, confirms the complexity of the subject. The history of Federal funding policy over the past 34 years will be considered in this chapter, together with an attempt to understand the philosophy behind the provision of identified programs.

The history of early settlement and its impact on indigenous Australians is well known. One of the many consequences of this history was that Aboriginal people were not encouraged to be involved actively in the political and economic life of the nation, and this certainly contributed to their alienation and impoverishment. In the general community, there was little understanding of their culture, their needs, their aspirations, nor of the impact of settlement. Once dispossessed of land and resources, their way of life changed dramatically. The policies of protection manifest through complex networks of restrictive laws, dis-empowered people by isolating them and controlling their lives to such an extent, that in many cases, confidence, incentive and hope were lost. Protection was followed by assimilation, integration, self-determination, self-management, self-empowerment and economic development, all of which meant and mean different things to different people. Of course, each of these policies brought with them, particular approaches to all aspects of indigenous affairs.

Before 1967, the little funding that was provided was mainly for welfare and the provision of basic infrastructure. Largely the states and the Northern Territory through missions, various administrators or superintendents and managers of cattle stations in the remote areas distributed the funding. In general, these administrators made the decisions about the usage of funds with little or no input from the indigenous beneficiaries. Gradually, various restrictions on Social Security entitlements were lifted, but in many cases, only minimal amounts of 'pocket-money' reached the recipients.<sup>6</sup>

### **1967 to 1972: Separate Development is Utterly Alien**

The Referendum, which was held on 27 May 1967, was carried with a vote of 90.77 per cent. As a result, indigenous Australians would be counted in the Census and the Commonwealth was empowered to legislate for them. Following the Referendum in 1967, the Prime Minister,

Harold Holt established an Office of Aboriginal Affairs and a Commonwealth Council for Aboriginal Affairs in November 1967. WC. Wentworth was appointed as Minister-in-Charge of Aboriginal Affairs. In a statement on Australia Day, 1972, Prime Minister William McMahon summed up Commonwealth achievements since 1967 and announced a five-point 'Statement of Objectives' of Commonwealth policy which he said was the result of experience gathered over the previous five years<sup>7</sup>.

The Statement of Objectives emphasised the need to treat indigenous Australians with respect and to ensure that they enjoyed equal access to rights and opportunities. It spoke of the individual's right to choice concerning their interaction with the wider society while encouraging and assisting them to preserve and develop their culture, languages, traditions and arts. The statement emphasised the need for programs to take into account the expressed wishes of Aboriginal Australians themselves. The objectives of specific programs were to build capacity, increase economic independence and to improve health, housing, education and vocational training opportunities. The enjoyment of civil liberties was to be promoted and any discriminatory laws that might remain were to be eliminated.

The need for special measures based on need to achieve these objectives was recognised. Also it was stated that these special measures 'should properly be regarded as temporary and transitional'<sup>8</sup> and that 'the concept of separate development as a long-term aim is utterly alien to these objectives.'<sup>9</sup>

It is very clear from the statement that Government accepted the need for specific accelerated programs for indigenous Australians in order to overcome disadvantage. However, they were not expected to continue indefinitely, and separate development was certainly not envisaged. It is interesting to note that one of the first pieces of legislation passed following the Referendum was the Aboriginal Enterprises (Assistance) Act of 1968. The intention of this legislation was to encourage indigenous Australians to establish business enterprises.

Besides the provision of state grants for the welfare and advancement of Aboriginal and Torres Strait Islanders, apparently government was beginning at last to recognise the importance of encouraging indigenous Australians to participate in the economic life of the nation.

### **1972 to 1990: Self-determination as a Political Strategy**

The Whitlam Government came to office on 2 December 1972. Gordon Bryant became the Minister for Aboriginal Affairs. The Department of Aboriginal Affairs (DAA) was established and the new Government increased the allocation of funds in the 1972/3 budget.

This was a period of great change in indigenous affairs. The Government endorsed the policy of self-determination and attempted to establish a political voice for indigenous people within the framework of government. By agreement with the states, with the exception of Queensland, their policy, planning and co-ordination functions were transferred to the Commonwealth. In 1973 and 1974, State Offices were established in all states except Queensland, and the majority of State public servants transferred to the Commonwealth. The DAA thus became

responsible for policies and programs for the advancement of Aboriginal and Torres Strait Islander people, including consultation and co-ordination.

In the interests of self-determination, there was strong support for the establishment of community-based organisations and increased funding was provided directly to them. Indigenous people were encouraged to establish organisations at local, state and national levels to both advise government and to deliver services. Community-based bodies to deal with matters such as health, housing, legal services, education and employment multiplied during this period.

Gordon Bryant set up the National Aboriginal Consultative Committee (NACC) in February 1973, and the first 41 members were elected in November 1973. It was expected that the NACC would represent Aboriginal interests to Government, but for many reasons, it was unable to fulfil this role effectively during its short and stormy history. The NACC was reviewed in 1976 and was replaced by the National Aboriginal Conference (NAC) in 1977 that continued until 30 June 1985. The last National Chairman of the NAC, Mr. Rob Riley considered that the NAC had been limited in independence and in what it could achieve by inadequate funding and staffing and 'tacit government pressures'<sup>10</sup>. However, he also felt that the NAC 'had moderate success in presenting the Aboriginal viewpoint to Government'.

The Chairman of the NAC made a very clear statement about the organisation's policies when he commented:

The overwhelming theme of these policies is self-determination, self-management and independence. These principles must underlie all programs in Aboriginal affairs. Our challenge is to make these principles a reality for all Aboriginals and Torres Strait Islanders.<sup>11</sup>

Further important legislation that encouraged economic development was passed during this period. There was the Aboriginal Loans Commission ACT 1974 which established the Aboriginal Enterprises Fund, the Aboriginal Housing and Personal Loans Fund and the Aboriginal Loans Commission and repealed the Aboriginal Enterprises (Assistance) Act of 1968. A companion piece of legislation was the Aboriginal Land Fund Act of 1974 that established the Aboriginal Land Fund Commission to administer the Aboriginal Land Fund. Incorporated indigenous organisations and land trusts could purchase land through the Fund.

The Fraser Government encouraged self-management rather than self-determination, supported economic and employment initiatives and passed the first Land Rights legislation. This government introduced two important pieces of legislation in 1976.

Firstly, many Aboriginal and Torres Strait Islander organisations were finding it difficult to incorporate under inappropriate State legislation. The Aboriginal Councils and Associations Act 1976 was introduced and passed to provide an alternate incorporation process under Commonwealth legislation. Since then, several thousands of indigenous organisations have

been incorporated under this legislation. However, by the late 1990s, when several Northern Territory organisations were found to be in breach of the requirements under the Act and were in danger of being wound up, this legislation was accused of being 'paternalistic' and inflexible.

Secondly, land rights become a prominent national issue in the 1970s and the Fraser Government introduced the Aboriginal Land Rights (Northern Territory) Act 1976 which was assented to on 16 December 1976. This legislation provided for the establishment of Aboriginal Land Trusts, Aboriginal Land Councils, the Aboriginal Land Commission and the establishment of the Aboriginal Benefits Trust Account (now known as the Aboriginals Benefit Account).

Both of these pieces of legislation encouraged the empowerment of Aboriginal and Torres Strait Islander people through the means to secure lands and the means to manage their own service provider organisations.

Aboriginal economic development received further encouragement by the passage of the Aboriginal Development Commission Act of 1980 which repealed both the Aboriginal Loans Commission Act 1974 and the Aboriginal Land Fund Act of 1974. The Aboriginal Development Commission (ADC) was established to enable indigenous Australians to purchase land for communities and groups, to access housing and personal loans, to obtain loans and grants for business enterprises. The ADC was also required to make recommendations to the Minister regarding the promotion of economic and social development for indigenous Australians.

The Fraser Government also introduced the Community Development Employment Projects (CDEP) scheme in 1977. Under the CDEP unemployed indigenous people may elect to forego their normal Social Security entitlements and work part-time on community or local government type projects and be paid the equivalent of those entitlements. It is an alternative to 'sit-down money', and benefits both the individual and the community. By the year 2000, there were 32,000 participants in the CDEP across Australia with many on the waiting list to join the scheme.

In March 1983, Labor returned to government. The Minister for Aboriginal Affairs, Clyde Holding addressed the National Press Club on the 20th anniversary of the Referendum. Although he spoke of what had been achieved in the previous 20 years, there is evidence of some degree of frustration with the political agenda of the Indigenous leadership in the following comments:

Over the past few years, many Aboriginal groups have determined that they should direct their energies to the development of an Aboriginal political strategy. It is not for me to advise them, but my position as Minister gives me a perspective and experience, which may be of help in the achievement of their political objectives.

However, I would suggest that it is imperative for the longer-term credibility of Aboriginal political positions that Aboriginals themselves utilise effectively the rights they have won over the past 20 years.<sup>12</sup>

He also noted the idea for a treaty, and spoke of the complexities surrounding the subject. Then he surprisingly commented ‘... it is essential to recognise that any treaty can do no more than reinforce the existing framework for social change. In the end, it is people, not papers, that change the world’<sup>13</sup>. It may be inferred from his comments that Holding was beginning to recognise that political concerns were consuming the indigenous leadership while matters relating to social development, capacity building, general advancement and accountable service delivery were being neglected.

As noted previously, a form of elected representative body, the NACC followed by the NAC, had existed from 1973 to 1985. Before the termination of the NAC, Holding, appointed Lois (now Lowitja) O’Donoghue, to advise him on the structure of a new organisation to replace it. The Minister released a discussion paper prepared by O’Donoghue<sup>14</sup> on 22 October 1985. O’Donoghue’s final report ‘An Aboriginal and Islander Consultative Organisation’ was tabled in Parliament in November 1986 and circulated widely for further discussion. The Report recommended a new organisation based on regional bodies drawn from representatives of local Aboriginal communities and service organisations.

These had been turbulent years with government acceptance of, and later retreat from, the idea of national land rights legislation, the search for a stronger national voice and general political activism. A significant development took place in the 1980s when the indigenous leadership took their grievances off-shore and aired them in international forums.

Indigenous affairs became a dynamic new mandate in the United Nations. It has grown in response to calls from indigenous people for greater recognition of their concerns. Through their links with the United Nations system, indigenous peoples have considerable influence when lobbying at the international level and their elite leadership is well versed in using the international community to its political advantage.

In 1982, the Economic and Social Council authorised<sup>15</sup> the creation of a Working Group on Indigenous Populations (WGIP) as a subsidiary body of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The WGIP was given the task of examining the problems experienced by indigenous people in the countries where they live and drawing up a document of human rights standards to be met by nations in their dealings with their Indigenous citizens. Its first session was held in July 1982. Indigenous Australians have been very active on the international scene since the WGIP was established and have participated vigorously in the drafting of the Draft Declaration on the Rights of indigenous Peoples since work was commenced on it in 1985. It was completed in 1993.

The Draft Declaration<sup>16</sup> is a wide-ranging document of 45 Articles, covering every conceivable political, civil, social, economic, or cultural right that could possibly apply to indigenous people. Although still a draft document without status, the rights enshrined in its Articles drive the contemporary political agendas of indigenous activists. Their connection with the United Nations has been a great source of encouragement and has fired their political aspirations and calls for a treaty.

It was in this environment that Gerry Hand commenced his Ministry when he replaced Holding as Aboriginal Affairs Minister on 24 July 1987. Mr. Hand was a passionate supporter of self-determination and encouraged the political evolution of the indigenous leadership.

The idea for a new body to represent Aboriginal and Torres Strait Islander people was supported by Hand. On 10 December 1987, he tabled a comprehensive proposal in Parliament entitled 'Foundations for the Future'<sup>17</sup>. It outlined his proposal for the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC). Hand explained that this arrangement was intended as a serious attempt to address the issue of self-determination for indigenous Australians. Following the release of Foundations for the Future, nation-wide consultations were held, and the ATSIC Act passed all stages by November 1989. ATSIC came into being on 5 March 1990, replacing the former Department of Aboriginal Affairs and the Aboriginal Development Commission. A new organisation, the Aboriginal and Torres Strait Islander Commercial Development Corporation (now Indigenous Business Australia) came into being.

The Australian Institute of Aboriginal Studies and Aboriginal Hostels Ltd. remained independent organisations within the Aboriginal Affairs Portfolio.

In 1999, after leaving the portfolio, Hand spoke of his views on the establishment of ATSIC and of his impressions concerning its current role:

We wanted an organisation or a structure that involved Aboriginal people in the running of Aboriginal Affairs, that transferred power to the users of the program, that was representative in the sense that it took into account cultural and regional issues at a local level, but was able to present at a national level a voice that was accepted as being representative of the community.<sup>18</sup>

The former Minister clearly saw ATSIC as an organisation that would give the power to the people at the regional and community level so that they could have greater control over their lives and their futures. He thinks that criticisms of ATSIC are unfair. He feels that if ATSIC were given increased resources and responsibility for all programs including health, education, housing, and increased political powers, then the problems facing indigenous Australians would be solved.

Hand explained that ATSIC was never meant to be just a lobby group, but a political body:

I make no apologies for trying to set up a political body that was able to represent, as best one can, under our terms of democracy, a voice that could speak out on behalf of the Aboriginal community in this country.<sup>19</sup>

It is unclear what importance Hand accorded ATSIC's role as a service delivery organisation. In fact, since it commenced, ATSIC has been through a number of changes and re-organisations. Philosophically, it is apparent that it sees its major role as political, yet believes that ATSIC should control all the funding for service delivery. Geoff Clark, the current Chairman,

argues that only ATSIC is in a position to determine these priorities and thus empower the indigenous community. Further, it is apparent in the documentation already mentioned, that Clark believes it is legitimate to re-direct funding from service delivery to political activism in the fight for the recognition of indigenous rights.

### **1990 to 1996: Social Justice and Reconciliation**

Robert Tickner succeeded Gerry Hand as Minister for Aboriginal Affairs<sup>20</sup>. During his tenure as Minister, he championed the cause of separate rights, was totally committed to self-determination and social justice and established the reconciliation process. No one could question his commitment to the indigenous cause. His time as Minister was not without controversy as a review of the history of Mabo, the Hindmarsh Island case and the establishment of the inquiry into the separation of indigenous children will attest. Robert Tickner has recently published a book, which covers the period of his Ministry<sup>21</sup>.

In spite of his total commitment to his constituency, there was little improvement in the overall situation of indigenous Australians. Deaths in custody continued, and problems with health, family violence and other social concerns did not decrease. Tickner appeared to believe that if Australia fully supported the social justice and reconciliation agendas then the rest of the problems would be solved. Unfortunately, the lack of attention to social development needs and ineffective management of the practical side of the portfolio did little for the quality of life of the ordinary people at the community level.

ATSIC had just commenced in the month before his appointment, so Tickner was very instrumental in setting the direction of the government response to the new organisation. Largely, both ATSIC and the Government believed the rationale behind the provision of indigenous-specific funding was to achieve social justice for indigenous Australians. They believed this objective could only be accomplished by establishing separate political and administrative structures. Unfortunately, in spite of this commitment to self-determination and the injection of considerable funds, the standard of living of indigenous communities did not seem to improve dramatically. Stories of depressed and dysfunctional communities continued to make headlines. The leadership of the peak bodies continued to seek solutions at the UN in Geneva.

### **1996 to 2001: Practical Reconciliation**

When the Coalition was returned to Government in March 1996, Senator John Herron took over Tickner's post. Herron was instrumental in putting into place the Coalition Government's agenda of practical reconciliation. He believed strongly in the need to get the basics right first. Improvements in health, housing, education and employment would only happen if programs were targeted better and directed to those in greatest need and people were made accountable.

From his time as a surgeon in a large Brisbane hospital, Herron was well aware of the health problems and trauma that many indigenous Australians experienced. As Aboriginal Affairs



Minister, Herron worked closely with Michael Wooldridge, the Minister for Health, to ensure the provision of adequate and appropriate health programs for indigenous Australians.

An innovative program, using the Australian Army, was initiated to accelerate the provision of housing and environmental health infrastructure in the most needy remote communities. Although the indigenous leadership derided the scheme as an example of 'white fella solutions for black problems', the communities, which benefited from the program, were pleased with the improvement in their standard of living.

Herron was also deeply committed to the concept of empowerment through economic development and encouraged the provision of funding for business enterprises. In March 1998, he released a discussion paper, 'Removing the Welfare Shackles.' In it, he proposed the establishment of Indigenous Business Australia (IBA) to replace the Aboriginal and Torres Strait Islander Commercial Development Corporation (CDC)<sup>22</sup>. The new body would have expanded functions. Through the IBA, the Coalition Government hoped to increase opportunities for indigenous Australians to establish businesses and create employment.

This is very positive. The issue of economic development and economic independence has received too little attention over the past 30 years. The majority of indigenous people in Australia have long been economically dependent. They have always been the first to be severely affected by economic downturns in the national economy and have the highest unemployment rates. In general, indigenous Australians have not enjoyed a place in the economic life of the nation.

Indigenous Australians have rarely been in the position to create their own wealth. The majority of individuals living in discrete communities do not have the option of actually owning their own home or business, and building an estate that will be an asset for their heirs to inherit. One of the reasons that Aboriginal land is vested in Land Trusts is to ensure that it cannot be sold off and that it remains in indigenous hands. There is some scope here for Land Trusts to examine ways of leasing land to individual members of a community.

If a workable solution could be found, then there would be an incentive for indigenous people to save for an asset.

The current [until 2003] Minister for Aboriginal and Torres Strait Islander Affairs, Philip Ruddock is continuing to support an agenda of practical reconciliation.

## **The Levels of Expenditure**

In 1967, the Office of Aboriginal Affairs was established with a budget allocation of \$10 million. In his statement released on Australia Day 1972, Prime Minister McMahon noted that, taking into account contributions from State Governments, some \$44 million nationally was being directed to indigenous specific programs in the 1971/72 financial year<sup>23</sup>. He also advised that the Commonwealth had appropriated \$41.8 million for expenditure through the Aboriginal Advancement Trust Account over the previous four years. Of this, \$25.3 million

had been paid to the states for expenditure on housing, education and employment including special works and regional projects.<sup>24</sup>

A Commonwealth Capital Fund for Aboriginal Enterprises had also been set up to assist indigenous Australians to establish businesses. It was clear that expenditure in this period, while still far from adequate, was increasing and that the funding was directed at improving living standards. Indigenous funding was boosted when the new Whitlam Government allocated \$53 million to Aboriginal affairs in the 1972/3 budget.

Interestingly, the first Aboriginal Federal Parliamentarian, Senator Neville Bonner later revealed that he was seriously concerned about the Government's handling of Aboriginal affairs. He criticised the expenditure of considerable sums on what he considered impractical schemes and what appeared to be an attitude that given enough money all the problems would be solved. He believed the deeper and numerous problems confronting indigenous Australians could not be helped by 'hand-outs'<sup>25</sup>.

Twenty years after the Referendum, the Shadow Minister for Aboriginal Affairs, David Connolly, noted, 'After 20 years and the expenditure of over \$5 billion there has been exceedingly slow progress in areas of Aboriginal advancement'<sup>26</sup>. He suggested that the then Minister, Clyde Holding and the Secretary of his Department were attempting to encourage separate development and create an Aboriginal industry but were ignoring the needs of those Aboriginal people most in need<sup>27</sup>. Holding addressed the National Press Club on 27 May 1987, the 20th anniversary of the Referendum<sup>28</sup>. It was interesting that Holding acknowledged that outcomes had not met public expectations. He claimed that the public did not take into account the complexity and sensitivity of Aboriginal affairs.

Although both sides of politics acknowledged that progress was slow, nevertheless there were also a number of achievements over the 20 years, 1967 to 1987, some of which were<sup>29</sup>:

- 1,200 Aboriginal controlled organisations as opposed to a mere handful in 1967;
- 23,000 families housed in 20 years;
- 54 Aboriginal Medical Services established;
- The adoption of an Aboriginal Employment Development Policy;
- The expansion of enterprise development through the Aboriginal Development Commission; and
- 8,000 participants in the Community Development Employment Projects scheme.

During the 10 years of the Hand and Tickner ministries (1987 to 1996) around \$9 billion was allocated to indigenous-specific programs. Some of this expenditure was in response to the establishment of ATSIC and to the Recommendations of the Royal Commission

into Aboriginal Deaths in Custody. In addition, following the Mabo decision in 1992, the Indigenous Land Corporation was established and \$200 million was allocated initially to the Aboriginal and Torres Strait Islander Land Fund in 1994/95.

Each year, from 1995-96 until 2003-04 the Land Fund has received and will receive \$121 million (indexed to 1994 values). \$1.3 billion will have been allocated by the end of this period. This is an important initiative as there is enormous potential for economic development through investment in land.

However, in 1996, in spite of the expenditure of \$9 billion, indigenous Australians were still experiencing unacceptable levels of disadvantage. When the Coalition came to government in 1996, it expressed a commitment to target the areas of greatest need, particularly in rural and remote communities. It gave an undertaking to improve health, housing, education, employment and economic development.

The Coalition inherited a Budget deficit, so in its first Budget, all portfolios, including the Aboriginal Affairs portfolio which includes ATSIC, had to accept some budget cuts. In the 1995/96 financial year the Aboriginal Affairs portfolio received \$ 1.1 billion. In the first Coalition Budget, it received \$53 million less than in the previous year<sup>30</sup>. Subsequently, the portfolio has not received less than \$ 1.1 billion per annum, with a record \$1.3 billion being allocated in the current financial year 2000/01. Allocations to other portfolios for indigenous-specific programs totalled \$1 billion in 2000/01<sup>31</sup>.

However, ATSIC made the following statement to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs:

There is very clearly insufficient funding available to respond to the unfulfilled responsibilities of other government agencies and certainly insufficient to meet the needs identified in Regional Council Plans<sup>32</sup>.

Irrespective of ATSIC's complaint that it is inadequately funded, it would appear that indigenous-specific programs do receive a reasonably level of funding. During his term as Minister, John Herron visited many communities and spoke to an extensive cross-section of indigenous elders, leaders, administrators and workers. Many people suggested that the current funding level could be sufficient if it were better targeted and administered.

This appears to be the crux of the matter. No matter how much money is provided for indigenous programs, no matter from which agency it flows and irrespective of whether it is designated 'indigenous-specific' or 'mainstream' policies, the allocation of funds and programs should be better matched to the level of need in communities. Further, success is not just dependent upon the allocation of funds. It is also determined by the capacity of communities and organisations to administer and use the resources. The relationship between capacity building and resource allocation cannot be over-emphasised.

## **The Commonwealth, the States and the Role of ATSIC**

In the words of the 1967 Referendum Official ‘Yes’ case, it was intended that ‘The Commonwealth’s object will be to co-operate with the States to ensure that together we act in the best interests of the Aboriginal people of Australia’. The responsibility was to be shared. Historically, the states and the territories have been responsible for the delivery of services on the ground, such as health, education, housing and essential services. Obviously, indigenous as well as other Australian citizens are dependent on these governments for these basic services and expect equal access to, and an equitable share of, these services.

There has always been some tension between state and Commonwealth governments concerning the delivery of services to indigenous citizens as to where responsibilities begin and end. There is also a Federal expectation that these services should be provided from the state and territories normal mainstream budgets, not from funds allocated by the Commonwealth specifically for indigenous programs.

Indigenous-specific funding should be additional to, not instead of mainstream funding. However, the question arises as to how is it decided whether funds are an additional indigenous-specific allocation or just an allocation of mainstream funds set aside specifically for indigenous programs. As the total Australian Budget is raised from the same sources, mainly revenue from various forms of taxation, the argument could be made that, indeed, all funds are mainstream funds.

Given the extent of the needs of indigenous Australians, it hardly matters whether they are described as ‘additional’ or identified mainstream funds. There is no argument that an adequate level of funding must be provided to ensure that these citizens receive the services to which they are entitled, and designating them as indigenous-specific helps ensure transparency.

When the Department of Aboriginal Affairs was established, it was not intended for its funding to be used for the provision of those basic services that were the historic responsibility of the states. Its funding was intended to be supplementary only. Subsequently, ATSIC has always seen itself as a supplementary funding agency, but claims that the state and territory governments have failed to provide an equitable level of assistance to their indigenous citizens<sup>33</sup>. Some funding is provided to the states and territories for indigenous-specific programs such as the \$91 million for the Aboriginal Housing Rental Program (AHRP).

ATSIC is uncomfortable with the Commonwealth government providing such funds, suggesting this ‘mainstreaming’ is insensitive and culturally inappropriate even though these governments do seek the opinions of indigenous people on various advisory committees. The Board of Commissioners would prefer to be responsible for the administration of this component of the housing program.

In all its reports, responses to various inquiries and submissions to government, ATSIC makes it very clear that it considers itself the only legitimate voice of indigenous Australia. Critics would question this in view of the fact that the majority of indigenous Australians (around 70 per cent) do not participate in the ATSIC electoral process. Many live their lives without

accessing ATSIC's programs so their capacity to access government programs would be severely limited, if only one agency controlled the entire indigenous budget.

In its introduction to the paper on the 2001/02 Budget, the ATSIC comment on the credentials of other advisory bodies is plainly offensive. ATSIC states that budget proposals should 'be scrutinised by a genuinely representative indigenous body, rather than be left to the whims of selected nominees on ad hoc 'consultative' groups'<sup>34</sup>. In this statement, ATSIC scorns those indigenous Australians who are not ATSIC-approved appointees and denigrates their ability to provide any valid or worthwhile advice.

In spite of these differences of opinion, there have been numerous arrangements agreed between the Commonwealth, ATSIC and the states. One of the most notable agreements is a commitment to improve overall outcomes for indigenous citizens. In December 1992, the Council of Australian Governments, COAG, (consisting of the Commonwealth, state and territory governments) endorsed the 'National Commitment to Improved Outcomes in the Delivery of Programs and Services to Aboriginal Peoples and Torres Strait Islanders'. This commitment is a key document in the relationship between governments and their indigenous citizens.

The guiding principles espoused in this document are a clear statement of direction for all governments, Commonwealth, state, territory and local in their dealings with indigenous Australians. Among the commitments were:

- Empowerment, self-determination and self-management by Aboriginal peoples and Torres Strait Islanders;
- Economic independence and equity being achieved in a manner consistent with Aboriginal and Torres Strait Islander social and cultural values;
- The need to negotiate with and maximise participation by Aboriginal peoples and Torres Strait Islanders through their representative bodies, including the Aboriginal and Torres Strait Islander Commission, regional state territory advisory bodies and community-based organisations in the formulation of policies and programs that affect them;
- Effective coordination in the formulation of policies, and the planning, management and provision of services to Aboriginal peoples and Torres Strait Islanders by governments to achieve more effective and efficient delivery of services, remove unnecessary duplication and allow better application of available funds; and
- Increased clarity with respect to the roles and responsibilities of the various spheres of government through greater demarcation of policy, operational and financial responsibilities.

Gerry Hand believed that, through its structure of regional councils, ATSIC would empower Aboriginal people at the community level and be more responsive to local needs. Many people do not believe this has been achieved. Sadly, they see the regional councils as being

unrepresentative and subject to factionalism and neglectful of the needs of those groups who do not have a voice on the councils. Justified or not, ATSIC is also criticised by the people at the community level who do not perceive ATSIC as providing the services they expect. If this is so, then perhaps there is a case for ensuring that the delivery of services through state and territory governments and structures other than ATSIC's network is maintained.

In the year 2000, ATSIC prepared a very detailed submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs into *The Needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples*<sup>35</sup>. In both the Standing Committee submission and in its response to the Draft Report of the Commonwealth Grants Commission's Indigenous Funding Inquiry issued in December 2000, ATSIC explained that its Board of Commissioners had determined four activities:

- Promote the distinct identity of indigenous Australians
- Preserve indigenous cultural heritage
- Enhance the rights of indigenous peoples; and
- Services not provided by other agencies.<sup>36</sup>

The first three of these activities are generally intangibles with results that are not readily measurable in the short term. This approach raises the question as to what these activities would actually contribute to social enhancement and capacity-building. Again, ATSIC seeks to encourage indigenous Australians to follow the path to separate development. While preserving indigenous cultural heritage and identity is important, there is a cost if indigenous Australians are encouraged to limit their interaction with the rest of Australia. Separate development ultimately limits the choices available to people.

ATSIC goes on to explain that its Native Title program totalled approximately \$53 million in 1999-2000 of which \$41.8 million was provided in the Budget. ATSIC 'decided that other priorities would have to be foregone for the sake of the drastically-under-funded representative body system' and identified the additional \$10.7 million by reducing the allocations to other programmes<sup>37</sup>.

Similarly, these priorities are reflected in ATSIC's paper setting out its priorities for the 2001/02 Budget. It explains that it considers the provision of funds for the support of Native Title Representative Bodies, 'in the pursuit of Native Title rights as a priority of the very first order' and comments that it has previously re-ordered the allocation of funds 'at the expense of other priority activities'<sup>38</sup>. ATSIC is adamant that its role is advocacy and political activism, at the expense of basic programs that improve the standard of living for its ordinary clients on the ground.

In recent years, hardly a week has passed without attention being drawn to the terrible plight of indigenous women and children, particularly those in more remote areas, who are subject to the horrors of family violence. When he was Federal Minister for Aboriginal and Torres

Strait Islander Affairs John Herron was strongly committed to addressing the issue of family violence in indigenous communities. Initially, he found that ATSIC was reluctant to allocate funds to tackle the problem. Eventually he was able to negotiate a commitment from the Commissioners to dedicate \$2 million to appropriate programs.

ATSIC acknowledges that family violence is 17 times greater in indigenous communities and by the 2000/01 financial year was committing some \$3.5 million per annum to support the operations of 12 Family Violence Prevention (Legal Service) Units<sup>39</sup>. The Office of the Status of Women also has provided \$1.3 million to ATSIC over four years for two Family Violence Advocacy Centres in Kalgoorlie and Cairns. This funding ended on 30 June 2001.

However, politics infringe upon this issue too. ATSIC makes the point that it does not have the prime responsibility for family violence issues, so it may not have the fiscal capacity to continue funding the two Family Violence Advocacy Centres. ATSIC states further that its budget (\$1.1 billion in 2000/01) is insufficient for it to have the capacity to consider any new initiatives to deal with family violence<sup>40</sup>. ATSIC expressed concern when the former Minister John Herron used his powers under the ATSIC Act during the Budget process to 'quarantine' its housing and infrastructure funds. This was done to ensure that a minimum amount of funds would be devoted to housing and infrastructure projects.

Given ATSIC's political objectives, what is the guarantee that special programs such as those for family violence or housing, would receive priority? What would happen to men, women and children at the community level, suffering the consequences of violent behavioural patterns and inadequate housing, if they failed to match the Board's political priorities? They could well run the risk of being neglected.

## **Accountability**

Accountability has always been a major concern regarding indigenous funding. The DAA, ADC and ATSIC have been subject to numerous reviews, audits and re-organisations. For the dedicated researcher, there is no shortage of detailed reports and documentation analysing the outcomes of these examinations. This intense scrutiny, over the past 30 years, seems to be the result of sheer frustration on the part of all governments, fed by public perception, not necessarily non-indigenous alone. Ministers for Aboriginal and Torres Strait Islander Affairs and their Offices constantly receive complaints from indigenous clients about misdemeanours perpetrated by funding agencies.

This constant questioning stems from the fact that governments and the public, both indigenous and non-indigenous, know that a considerable amount of money has been spent over the past 30 years, but that the situation on the ground does not seem to improve substantially. In spite of what appears to be quite large specific allocations for housing and infrastructure, as an example, the provision of shelter and adequate environmental health infrastructure falls far short of requirements. It is not difficult to find a discrete community in any state or the Northern Territory that is not desperately in need of more housing, improved infrastructure and increased funding for repairs and maintenance.

It needs to be said that there have been enormous improvements in the situation of indigenous people in this country. The major Budget statement produced by the Minister each year and the Annual Reports of all departments including ATSIC, provide detailed information on the programs funded and excellent analyses of their outcomes. However, the public does not generally read such weighty documents.

In his Joe and Enid Lyons Memorial Lecture in November 2000, Senator Herron said:

I myself believe that ATSIC has done itself a disservice by failing to tell the broader community about the excellent work it is doing in addressing indigenous disadvantage. ATSIC is a professional organisation comprising talented and committed elected representatives and public servants. Through both its coordination function, and role in administering a wide range of indigenous programs, it is achieving a great deal for indigenous people. There are indeed many facets of ATSIC's work to improve the living standards of Australia's indigenous people, all of which deserve to be better known.<sup>41</sup>

While there have been many improvements, there still remain pockets of extreme disadvantage. The example of family violence is testimony to the existence of many dysfunctional communities. Every year, reports on health, housing, education and employment indicate the continuing needs in these areas. All government agencies, Commonwealth including ATSIC, state, territory and local must be fully accountable to indigenous Australians. This accountability goes far beyond correct accounting procedures and balancing the books. This accountability is judged by the success or failure of programs to deliver services that improve the circumstances of their clients.

Given the current circumstances of indigenous Australians, particularly those in remote communities, there is adequate evidence for far greater accountability in the sphere of social and community development. Further, there is the question of communities being accountable to themselves. There will be no positive results unless attitudes change in the communities. There is evidence that the provision of millions of dollars worth of practical infrastructure has failed to help countless communities.

Communities need to rebuild, and take control of their present and their future. They need to decide for themselves what they need to do to establish this control. Two of the essential elements required are the re-establishment of respect for the elders and the development of strong internal leadership. Once people take control of their own lives, things will change. Long-term social development programs have the potential to play a significant and creative role in the life of communities. Social development programs that build capacity throughout the community will achieve more positive results than many of the programs that have been imposed on communities by external agencies, both indigenous and non-indigenous.

Properly constructed social development programs, drawn up in consultation with community representatives, have the potential to turn communities around, over time. Lives must be rebuilt and people need to gain confidence in their capacity to control what is happening to them. As people begin to set goals and achieve them, self-esteem grows and hope returns.



## The Future

This story of the provision of Commonwealth funding through 34 years from 1967 to 2001 provides a great deal of food for thought. The study of the level of funding and the types of programs funded would have been incomplete without an examination of the philosophies and policies behind them.

The Federal Indigenous affairs budget has grown from the allocation of a mere handful of Commonwealth dollars in 1966/7 to the provision of over \$2.3 billion in 2000/01. The indigenous population has grown from an estimated 102,000 in 1966<sup>42</sup> to 386,000 in 1996<sup>43</sup> so it is sure to exceed 400,000 in the 2001 Census. A population of 400,000 is still small and it is reasonable to maintain that there should have been a greater improvement in conditions with the expenditure of several billion dollars over the past few years.

The indigenous population is scattered across the country, with approximately one third living in metropolitan and large urban areas, one third in rural and provincial urban areas, and one third in remote communities. ATSIIC has estimated that 66 per cent of indigenous people could be classified as urban dwellers. ATSIIC also said that many more would be affected indirectly in that they have to commute to urban areas and use urban services<sup>44</sup>. People living in urban and provincial areas have access to the services generally provided as a matter of course in built-up areas. These services such as health, education, employment, housing and infrastructure such as power, water, good roads and public transport services are provided for all citizens, regardless of ethnicity. Yet, considerable indigenous-specific expenditure is allocated to urban and rural areas. For example, the CDEP scheme is now available to urban-based indigenous people. However, the new 'Work for the Dole' program operates in these areas, so this could be seen as a duplication of services. Surely it would be more cost effective to put effort into ensuring that this program is sensitive to the specific needs of indigenous people, to provide for joint indigenous management where feasible and to encourage Aboriginals and Torres Strait Islanders to work in together with the participants from the general population. Apart from being a contribution to reconciliation, such an approach would prepare indigenous participants for mainstream employment.

Looking at the history of indigenous affairs over the past 34 years, it seems that the indigenous leadership's desire for separate development based on ethnicity has grown stronger with each year. In some respects, the reconciliation process appears to be emphasising the divide between indigenous and non-indigenous Australians. The indigenous leadership is encouraging Australians to believe that only through the terms of a treaty will a start be made on resolving the issues that are a legacy of the past.

Dysfunctional communities provide evidence of the failure of past policies. In spite of all efforts, these communities continue in their misery, weighed down by the evils of poor health, family violence, illiteracy, youth suicide, inadequate housing and infrastructure, unemployment and failed enterprises. They are pointed out as living examples of the disadvantage that has resulted from dispossession and the harsh government policies of the past. They are the archetypal victims and as such, they are regularly portrayed as the face of Aboriginal Australia on the international stage. If this misery did not exist, what case would there be to take to Geneva?

The leadership and their non-indigenous supporters fiercely protect the ethnicity of these communities by condemning any programs that they judge to be 'mainstream', and demanding that only 'culturally appropriate' programs be allowed. It is almost as though there is a policy of encouraging the preservation of culturally pure communities, no matter what the cost. It is an insidious form of paternalism no less damaging than those that existed in the past. For every positive achievement elsewhere in Australia, the circumstances of these victims can be used to prove the existence of the exact opposite. The argument is that the current problems are the results of past policies, so now programs that are based on the premise of separate development must be given the chance to repair the damage. No wonder the communities are confused.

Perhaps the time has come to forget the rhetoric and look honestly at what separate development is really delivering on the ground. The 60 per cent of indigenous Australians who are under 25 years of age need to be given the widest possible choice of options for development. No one would dispute the importance of preserving culture, language, traditions and ceremonial life. Furthermore, there will always be a place for special programs to support these interests. Nevertheless, by insisting that they follow the path to separate development, their choices will be severely limited and their future will be bleak. These young people must be encouraged to see themselves not only as Aboriginal or Torres Strait Islander, but also as Australians entitled to everything this country has to offer its people. It is the right of all Aboriginal and Torres Strait Islander Australians to have the opportunity to participate fully in the life of the nation and to contribute their skills and energies to building a nation for the 21<sup>st</sup> Century. It is the right of all indigenous Australians to use mainstream programs for their health, education, employment and housing needs without hesitation, and they should be encouraged to do so while at the same time demanding full accountability from such programs and from the nation.

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# Sceptical Thoughts on Customary Law

**Kenneth Maddock**

It would be too strong to say that Aboriginal customary law is getting a bad reputation even among those who have been seen as its natural defenders. But its real or imagined drawbacks are being exposed in a way which is new at the very time that demands are being made for its recognition as a component of a treaty, as a technique of 'reconciliation' or as a remedy for the ills of Aboriginal society. Unless some hard thinking is done about what customary law is and what its recognition would entail, any political initiative in its favour may end in tears and disillusion.

It has been rare in recent decades for respectable people to show any openness about what may be wrong with Aboriginal culture. For example, anthropologists who do research among Aborigines know a lot of what goes on in the communities they study, but they are prone to put themselves forward in public as celebrants of Aboriginal virtue and advocates of Aboriginal interests. They may have been inspired in this by the example of W. E. H. Stanner, a fine anthropologist and a man of many insights, who now and again teetered on the edge of humbug.

An example of the type of sentiment against which the tide is turning is Justice Blackburn's observation in the Gove Land Rights Case (1971), which found many admirers:

... the social rules and customs of the plaintiffs cannot possibly be dismissed as lying on the other side of an unbridgeable gulf. The evidence showed a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called 'a government of laws and not of men' it is that shown in the evidence before me.<sup>1</sup>

A judge deals with evidence put forward by the parties. Blackburn formed his opinion after hearing about some clans in the northeast corner of Arnhem Land. He was not drawing a conclusion from a study of a particular community or from an inquiry into Aboriginal rules and customs generally. Had he been attempting either he would have done well to note the views expressed by Phyllis Kaberry during her research in the Kimberleys in the 1930s. As part of her interest in relations between the sexes, Kaberry was keen to refute what she believed were stereotypes about the oppression of Aboriginal women by men. But her observations led her to think that: 'In the absence of a written code of law, it is difficult sometimes to make a distinction between the legal investiture of power in the man and that wielded by him in practice ... Ill-treatment and a beating [handed out to a wife] cannot be immediately assumed to be the sign-manual of authority'.<sup>2</sup> The point was well taken, but Kaberry must have been unsure how far she could take it, for she added that a closer inspection might show beatings and ill-treatment were 'penalties' inflicted for 'non-fulfilment' of wifely duties, that is, a husband's violence might be lawful, not capricious and arbitrary.

Kaberry knew that women as well as men acted violently: ‘I, personally, have seen too many women attack their husbands with a tomahawk or even their own boomerangs, to feel that they are invariably the victims of ill-treatment.’ Were these bad-tempered acts or instances of men being punished for doing wrong? Kaberry was not clear about it and one has the feeling that she had become entangled in different threads of thought. The underlying problem was her inability to resolve the opposition of legal and practical power. Be that as it may, the behaviour recorded by Kaberry—men beating and badly treating their wives, women attacking their husbands with axes and boomerangs—is hard to reconcile with the Blackburn paradigm of ‘a government of laws and not of men’, of ‘a subtle and elaborate system ... remarkably free from the vagaries of personal whim or influence.’

A Blackburn-type view is held by some Aborigines. According to Galarrwuy Yunupingu, a leading politician from the same part of Arnhem Land as the plaintiffs in the Gove case:

I think of land as the history of my nation. It tells of how we came into being and what system we must live. My great ancestors who lived in the times of history planned everything that we practise now. The law of history says we must not take land, fight over land, steal land, give land and so on. My land is mine only because I came in spirit from that land, and so did my ancestors of the same land.<sup>3</sup>

Other recollections of the past are less pleasing. The anthropologist T. G. H. Strehlow admired the learned elders and ceremonial chiefs whom he had known among the Arrernte of Central Australia, yet even he admitted that they could act tyrannically. For example, ‘a weak man with few friends sometimes had to put up with many wrongs’<sup>4</sup> and murder and massacre were committed in the name of religion.<sup>5</sup> Wandjuk Marika, a plaintiff in the Gove case, said of northeast Arnhem Land before the missionaries came:

... there was a big war, that went on and on. The fighting was over two things, the sacred places and women ... In a big war, they might kill three or four people. Then there was a break for maybe two weeks, or even longer, two months. Then the members of the groups who have had the people killed, they would go and kill the people who killed them. The fighting went on and on and on. Of my own people, only 10 were alive when the mission came—they were killed by the Djapu and another tribe. They killed my people, and my people went and killed theirs.<sup>6</sup>

An interesting point about killings on this scale is that they would be conducive to land changing hands. Kaberry flatly denied that this ever happened,<sup>7</sup> but some modern anthropologists accept that it does. For example, Peter Sutton, who has described Aborigines as ‘devious and ruthless’ in their politics, speaks of the Warlpiri and Pitjantjatjara practising ‘imperialism’ in Central Australia, and Kingsley Palmer of the Walmatjarri being ‘the greatest colonisers’ of the Kimberleys.<sup>8</sup> There would be no point in using these expressions unless some Aborigines dominated and displaced others.

Regional variation and historical circumstances may have led to conflicts of opinion among observers, as may their opportunities for learning about Aboriginal life, their values, their

political leanings or even their temperament. But the fact that different opinions are held shows that the nature of Aboriginal society and of the laws or customs which regulated it are debateable. It follows that the pros and cons of recognising customary law need to be discussed with an awareness that a range of opinions exists and that facts are available in the light of which they can be assessed.

### **A Social System of Their Own**

Societies of the kind on which anthropology has tended to concentrate—small in scale, pre-literate, elevating the importance of kinship in social relations, and with a simple technology, a subsistence economy and a limited understanding of the outside world—may mostly lack ‘central authority, codes, courts, and constables’ as Bronislaw Malinowski said of the Trobriand Islanders in Melanesia,<sup>9</sup> yet unprejudiced observers have seen order and regularity in their social life.

A case in point is Horatio Hale, a member of the United States Exploring Expedition of 1838-42 which visited New South Wales in the course of travelling about the Pacific. He wrote that Aborigines had ‘a social system of their own, regulated by customs ... to which they conform apparently because they have no idea of any other mode of life, or because a different course would be followed by the universal reprobation of their fellows.’ The customs or rules he discussed had to do with initiation, marriage, punishment of transgressions, war (or duels) and sorcery among other matters.<sup>10</sup> This early observer left no doubt that, as the *Native Title Act* 1996 would long afterwards put it, traditional laws were acknowledged and traditional customs observed.

There are, of course, many later accounts of traditional culture in which anthropologists document the existence of norms, of sanctions for wrongdoing, of the mutual coherence of norms and sanctions within a larger whole and of the ultimate—or Dreamtime—rationale of all that exists. For the most part anthropologists have accepted the existence of law or law-like phenomena, or more broadly of social order and social control, while trying to avoid an undue or ethnocentric reliance on the ways in which ‘the law’ is thought about in western societies.

For example, Ronald Berndt maintains that two distinctive elements are found in Aboriginal systems of ‘law and order’.<sup>11</sup> First, people look back to a remote past, to models of behaviour laid down in the Dreamtime, for guidance in the present. Second, their society is kin-based, with a definite pattern of behaviour being conventional in each type of relationship (e.g. that of father to son or of mother-in-law to son-in-law), though how well the pattern is realised in everyday life is affected by such considerations as age and seniority and by the fact that no two individuals are identically aligned with their fellows (thus two men may be brothers, but one will be his father’s elder son). From the cases discussed by Berndt it is clear that a man feels himself to have some latitude in starting a quarrel or getting involved in someone else’s dispute.

When the Australian Law Reform Commission reported in 1986 on the recognition of ‘Aboriginal customary laws’ it found that although anthropologists differed on whether there

existed 'persons with instituted authority to resolve disputes', they agreed on the existence in traditional societies of 'a body of rules, values and traditions, more or less clearly defined, which were accepted as establishing standards and procedures to be followed and upheld.'<sup>12</sup> The same could, of course, be said of social life in just about every part of the world.

## **Distinguishing 'Law' and 'Custom'**

Definitional questions can be boring, but they are unavoidable when arguing about a topic like this since it is important to know what it is in Aboriginal culture that might be strengthened by recognition. As it happens both the definition of law and the distinction between law and custom have exercised anthropologists. E. Adamson Hoebel, an authority on North American Indian ethnography who has been influential in the anthropology of law, suggested that: 'A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognised privilege of so acting.'<sup>13</sup> Although Hoebel wished to distinguish law from custom, he did not define the latter. It is clear from his account, however, that customs, as distinct from laws, are social habits or patterns of behaviour that are not backed up with the rightful use of force, e.g. 'patterns of pottery making, flint flaking, tooth filing, toilet training'.<sup>14</sup> Of course, given the diversity of values in the world there might be societies in which an individual who fails, say, to use the toilet or to cook kangaroos in a certain way will be threatened with or suffer the application of rightful force, i.e. what at first sight might be taken for customs might turn out to be law-governed after all. There might also be societies which have custom but not law.

Some anthropologists are ready to accept that law is not a necessary feature of social life. For example, A. R. Radcliffe-Brown adopted the Jurist Roscoe Pound's view of law as 'social control through the systematic application of the force of politically organised society.' If the field of law is limited to that of 'organised legal sanctions', it follows that there may be societies without law. Radcliffe-Brown accepted this conclusion: 'The obligations imposed on individuals in societies where there are no legal sanctions will be regarded as matters of custom and convention but not of law; in this sense some simple societies have no law, although all have customs which are supported by sanctions.'<sup>15</sup> Aboriginal societies were probably without law on his view.

Other anthropologists, however, maintain that law, in a usefully precise sense, exists universally. Thus Leopold Pospisil, a New Guinea specialist trained in Roman law, argues that law exists in all societies, that it takes the form of decisions made by an authority and that it has four attributes: authority; intention of universal application; definition of right and obligation between the parties; and sanction.<sup>16</sup> Social phenomena are legal only if they exhibit the complete set of attributes, but in all societies there are some phenomena which do. A significant point is that Pospisil accepts that many systems of law can operate within a society, including systems (such as those in force among criminals) stigmatised as illegal by governmental authorities.

It is fair to say that whatever their differences about the definition of law anthropologists are reluctant to accord legal status to rules unless they are reflected in the behaviour of members of

the society. Hence the importance attached to 'trouble cases', as Hoebel and his collaborator, the jurist Karl Llewellyn, called them.<sup>17</sup> That is to say, it is by studying processes of disputation that one is best able to separate rules which are behaviourally significant from 'dead rules' and from rules which receive lip service but have little bearing on people's lives. In addition, it is in the course of disputes that the meaning of the rules to which disputants appeal is most likely to be clarified.

It was a commonplace of functional anthropology from at least the 1920s that the beliefs and practices of a community formed an integrated whole in terms of which its members conducted their lives. This opinion has become received wisdom, taken for granted far beyond the profession of anthropology and accepted within it by many who would not call themselves functionalists. As Tony Swain puts it, the Aborigines were 'a people whose Law simultaneously embraced 'religious', 'social' and 'geographic' 'realms'.<sup>18</sup> Frederick Rose's analysis of the Wanindiljaugwa of Groote Eylandt illustrates these conjunctions and, in so doing, brings out the difficulties which a highly integrated culture could pose for the wider Australian society if a decision were made to recognise customary law.

According to Rose, the manner in which marriage was regulated led to younger men remaining single while older men accumulated wives, averaging four each.

One might have expected bachelors to rebel against the system, but the long period of initiation to which they were subjected not only absorbed their energies but left them impressed by (and no doubt fearful of) the collective power of the elders. As for women, the system was to their advantage given the difficult Australian environment and the simple Aboriginal technology. Marrying for the first time in their early teens and facing the onerous burden of many years of food gathering and child bearing, it was in their interest to form collectives of co-wives around dominant older men.<sup>19</sup>

The Wanindiljaugwa, on Rose's view of them, had achieved an ingenious adaptation of society to economy and environment and of different social interests to one another. It is predictable that egalitarians and humanitarians would deplore the system, but it is easy to foresee possible rejoinders. It could be said that although inequality and subordination are obvious, equality among men prevails in the long run: male monopolists were once on the outer themselves; and younger males will, in the fullness of time, enjoy the benefits from which they are at present excluded. And, of even the most painful and frightening initiation rituals, it can be said that the men in charge inflict nothing on others that they themselves did not suffer when younger.

Suppose, however, that the economic underpinning of the system has collapsed. With it would have gone the rationale for the interlocked ritual and marital arrangements. No longer an organic product of particular circumstances of life, they may be fated to decay unless they can be underpinned anew. Individuals who loved the old system or were well served by it might accordingly take defensive measures: first, by having the prerogatives of elders and the rules of ritual and marriage classified as customary law; and second, by having customary law recognised by the wider Australian society.



Anthropological studies can be helpful in giving meaning and substance to the words ‘law’ and ‘custom’, in showing the many forms which human culture can take and in reminding us that this diversity need not imperil the survival of the race. But the time when Aboriginal communities could realistically be treated as though they were in a pristine state (the condition they were in before British settlement) has long passed. The pros and cons of recognising their customary law cannot be discussed as though the outside world did not exist.

It follows that only an academic point would be served by asking what Aboriginal communities would be like if pure customary law could be restored. Only the most optimistic social engineer—or foolish reformer—would try to reinstate it in today’s communities. So what questions can realistically be raised in the recognition debate? I shall focus on four:

1. What is the place of customary law in Aboriginal communities of the last few decades?
2. Is customary law a solution to the widely publicised problems besetting many communities today?
3. Irrespective of the answer to the first two questions, is customary law a good thing which should be encouraged by persons who do not belong to the communities which practise or used to practise it?
4. What would it mean to recognise customary law?

### **Customary Law Today**

An enlightening account has been given by Robert Tonkinson. In a widely read book he gave a good description of the traditional laws and customs of desert Aborigines settled at Jigalong in the remote outback of Western Australia. An article Tonkinson wrote eight years later enjoys less fame, but ought to be read as a sequel. By then more changes had taken place at Jigalong and older people were running into difficulties trying to maintain traditional standards against the hostility or indifference of the rising generation. Ironically, their problems began soon after their ‘victory’, over ‘crusading’ missionaries sent by the Apostolic Church of Australia, a fundamentalist group which controlled Jigalong for many years.

According to Tonkinson’s book, after children left school they showed a high degree of conformity to ‘the cultural dictates of their elders’. For example, young men could have taken work at other places in order to escape initiation with its painful operations of circumcision and subincision, but none had ever done so. Perhaps there was an in-built incentive to submit to the ordeals—a boy would be promised a wife by a man who had helped initiate him. ‘If all went well in the interim, and gifts had been exchanged between the families concerned, the girl would be sent to live with her husband before puberty. By that time the husband would be in his late twenties.’

The marriage system was in pretty good shape. It was still common for girls to have their marriages arranged in early childhood. Admittedly some girls were unenthusiastic about marrying men a lot older than themselves and fewer went to their promised husbands than would once have been the case. But in spite of this symptom of breakdown, it was unusual for ‘wrong’ marriages to be contracted, i.e. for a man and woman to flout the elaborate and restrictive rules which governed relations between the sexes.

Social controls remained harsh. Offenders were likely to be denigrated in public and could be speared in the thigh or given a beating. It was not only men who were violent. The sight of women clubbing each other provided 'considerable enjoyment, especially [to] male spectators.'<sup>20</sup>

How quickly things change! Only eight years after celebrating the Aboriginal victory over Christian crusaders, Tonkinson saw a new threat to traditional values: 'The 'problem' of misbehaving children suddenly emerged ... reluctance to interfere with children's autonomy ... Prevents the Aborigines from acting to fill the gap left by the missionaries.' What he called children's autonomy looks more like a euphemism for Brat Power. In effect, the little horrors blackmailed their parents who were afraid to take action against promiscuity, vandalism and breaking and entering lest they provoke children into exercising their newly discovered 'power to abandon Aboriginal culture in favour of that of the whites, which is increasingly impinging on them and offers many attractions.'

Tonkinson knew that modern life, even in a place as isolated as Jigalong, required that children learn 'behavioural norms having no parallels in the pre-contact situation.' But mission paternalism had relieved parents of most of the responsibility for bringing up children and the children, though unlikely to become Christian, were adroit in playing off the rule-ridden domain of the missionaries against the indulgent child-rearing regime of the Aboriginal camp. In fact, much that the missionaries did was appreciated by Aboriginal adults, if only because it relieved them of a range of responsibilities. When government policy imposed 'self-management' the adults found themselves not only free of missionaries but destitute of ideas on how to cope. They were haunted by the spectre of 'wrongly related couples publicly proclaiming their resolve to remain together as man and wife.'<sup>21</sup>

The Jigalong experience may be unique in its particulars, but similar developments have occurred in other places. Strehlow, the son of a Lutheran missionary and no friend of white settlers, reported that their arrival in Central Australia in the late nineteenth century led to a breakdown of the marriage monopoly enjoyed by older men. Many younger men switched loyalties in the hope 'of gaining the girls of their personal choice—and the protection of their white masters against the wrath of their own outraged elders—in return for faithful service in the white man's employment.'<sup>22</sup> Much the same happened in western New South Wales during the first half of the twentieth century to judge from Jeremy Beckett's comment that younger people 'wrest[ed] control over marriage from their seniors'.<sup>23</sup> Beckett has also spoken of the 'negative valuation' Aborigines were making of traditional culture at that time, which can only mean that a rising generation rejected what tradition demanded. For example, the ritual and magical power of elders became suspect, initiation ceremonies were abandoned and marriage rules flouted.<sup>24</sup>

Hostility between generations is not new. The Aboriginal writer Kevin Gilbert recognised it via Grandfather Koori, a character he created to signify ancestral wisdom and dignity. According to Grandfather: 'You go back just a little bit in time ... If a kid smashed a window or was cheeky or vicious his uncle or aunt whaled his arse ... Nowadays, you even ... yell at a kid that's pesting and the mongrels run for the white policeman.'<sup>25</sup> But as the punitive

method to which Grandfather looks back with nostalgia is one that Aborigines would have learned from Europeans, it seems that even he is a step removed from traditional life. Perhaps he, too, belonged to a generation which defied its elders.

Some observers maintain that in spite of great changes there has been a persistence of traditional laws and customs even in the more settled parts of Australia. The Aboriginal anthropologist Marcia Langton has analysed swearing and fighting in order to 'show how Aboriginal customary law is expressed in this behaviour, how the rules operate, and how culturally meaningful it is for Aboriginal people to employ these social devices'. She plausibly traces a connection between some practices in contemporary society and 'traditional cultural patterns'.<sup>26</sup>

Hale had long ago shown that displays of violence could serve a juristic purpose. He reported that when an offence had been committed which did not call for tribal interference a duel might be fought between the two men concerned. They took it in turns, in front of an audience who acted as 'witnesses and umpires', to club each other over the head, the first blow being struck by the man who had been wronged—the combat is continued, with alternate buffets, until one of them is stunned, or the expiation is considered satisfactory.<sup>27</sup>

The desire to redress wrongs is not the only motive for violence. According to Fred Myers, the desert Pintupi are not interested in a quiet life: 'fights provide drama ... indeed, one motive for drinking alcohol ... is the excitement of the violent engagements that follow.'<sup>28</sup> Men and women alike take pride in their fighting ability. Fights are remembered for a long time afterwards and give rise to animated discussion.

One can agree with Langton that modified versions of these forms of behaviour have persisted in modern fighting. Gaynor Macdonald describes how, among Wiradjuri in New South Wales today, two men who are at loggerheads will fight before an audience until one is beaten or the bystanders intervene to break it up.<sup>29</sup> It is perhaps of no great consequence that fists are used, instead of clubs, though it is a more telling comment on the dissolution of old patterns of conduct that what occurs is more a bout of fisticuffs, to which notions of fair play apply, than a ritualised duel. In these respects Wiradjuri fighting appears to have been partly assimilated to man-to-man fights of the kind that might occur among Australian bush workers and country dwellers. Nothing in Macdonald's account (or in Langton's) suggests, however, that there is any longer an equivalent of the spearing with which an offender against tribal laws would be punished (though this is said still to be done in remote parts of Australia) or of the wars which used to be fought between organised groups. Hale described both practices as did many later observers.

There is a problem with Langton's argument. Her observations are a useful guide to the complexity of some modern situations. But she knows that people, including Aborigines, can be offended and repelled by brawls and foul language, and she admits that not all swearing and fighting are examples of 'dispute processing' and 'law maintenance'. Aborigines, she concedes, would want to put limits on 'disruption of the peace or unjustified assault and violence.'<sup>30</sup> Unfortunately, she does not explain where to draw the line. Yet any serious moves to recognise

customary law would have to distinguish between what will count as customary law and what will not, and between what is acceptable in it and what is not.

### **A Cure for Affliction?**

Between 1964 and 1970 I spent two years in southern Arnhem Land, mostly on the Beswick Reserve. The reserve was run by the Welfare Branch of the Northern Territory Administration which, in theory, aimed to assimilate Aborigines to an ill-defined or loosely defined Australian way of life. Implementing the policy did not, in my observation, lead to gross interference with traditional laws and customs. It is true that jobs of a sort were provided, children went to school, health was looked after and there was little or no fighting. This last feature could mean that self-help had been abandoned either willingly or under pressure or that these Aborigines were a peaceable lot.

Major ceremonies were performed every year into which most boys were inducted, the complicated system of social organisation was well understood and there seemed no overt rejection of the marriage rules, though promised marriages were unlikely to come off. There were a number of able singers and dancers. Mythology, totemism and folklore were far from dead. Political consciousness, in the sense of an awareness and assertion of rights in relation to the state or the wider society could scarcely be said to exist, but a form of political thinking was expressed through the concepts of blackfellow and whitefellow law. The terms stood for something much wider than a lawyer's idea of law. One referred to traditional Aboriginal culture, the other to the body of European skills and practices. The conceptual opposition was not a basis for antagonism by which one law was glorified and the other vilified as satanic. As I understood it, the Aborigines wanted both, which meant they had a job of learning ahead, for whitefellow law was culturally alien and much of it was poorly understood or not understood at all.<sup>31</sup>

Many statements about Aboriginal law stress its unchanging character. As a Pitjantjatjara man put it, there 'is one Law and it is there forever.'<sup>32</sup> I did not find this to be the case in my research at Beswick. Blackfellow law was said to originate in the Dreamtime, and people spoke of following it up. But they also spoke of being 'new people' who were 'soft' and 'easy' in contrast to their forebears, the 'old people', whose law had been 'hard'. The implication was clear: blackfellow law could be modified without being abandoned.

This position is interesting in the light of later developments since it amounted to a rejection of assimilation without being a whole-hearted endorsement of the indigenous (a word having no currency in the 1960s). In effect, the Aboriginal vision was bicultural, not monocultural. The practical outcome would have been a hybrid culture. Perhaps life is not meant to be easy. Even at the time it was possible to see difficulties in the Aboriginal position arising from incompatibilities between the two laws in what they required to be done and in their underlying assumptions. Whether a working compromise could have been achieved is now an academic question, for in the 1970s government policy took a fateful turn. New keys to a fulfilling and meaningful life were issued—self-determination, traditional land rights, the glorifying of a supposedly immemorial culture (often accompanied by denigration of alternatives). The

‘designer tribalism’ attacked by Roger Sandall<sup>33</sup> was still to come, but foundations for it were being laid. The new approach may have failed to work in the manner hoped for, but it opened the way to a future that has become our present.

The Beswick Aborigines did not speak of customary law. If someone else had used the expression they would probably have equated it with blackfellow law, which in turn was one half of their bicultural vision. Today, customary law is often presented in the media and by socially concerned people as a solution to problems besetting Aboriginal communities. Gatjil Djerrkura, an Arnhem Land man and ATSIC councillor for the Northern Territory, told a Senate inquiry into mandatory sentencing that youngsters found it ‘fun’ to ‘escape from their own culture.’ Djerrkura concluded that ‘the situation highlighted the need for Aborigines to be able to enforce customary law’, i.e. to impose it on those who vote against it with their feet. He is not alone in his diagnosis of contemporary youth. Alison Anderson, ATSIC regional councillor for Alice Springs, told the Senators that ‘Aboriginal youth saw jail as a rite of passage and even ‘fun’ because it helped them escape from their own culture.’<sup>34</sup> It cannot be easy to deal with children and adolescents like these, or with Tonkinson’s Jigalong juveniles, but it does not follow that the wider society should assist Aboriginal elders in overcoming resistance.

The statements by Djerrkura and Anderson illustrate a generalisation made two years earlier by Father Frank Brennan:

Young men facing initiation or some corporal punishment or young women facing a traditional betrothal to a much older man increasingly want to opt out of the traditional law and opt in to the system of individual choices and liberties they see on screen ... or in the streets ... Free to choose, the young may abandon [Aboriginal] culture even if only for short-term gain or liberty.<sup>35</sup>

Gatjil Djerrkura and Alison Anderson, like Kevin Gilbert’s Grandfather, may be right. If closed communities could be reintroduced and the cultural values of the past imposed and instilled anew, there would probably be a decline in the loutish and destructive behaviour about which they complain. After all, as Langton wrote: ‘Aboriginal Law seems to have worked to prevent breaches by the threat, if not the actuality in most instances, of severe corporal punishment and even death.’<sup>36</sup> But it is hard to envisage the wider society tolerating the drastic social engineering that would be required to restore the old regime. Moreover, the problems facing Aboriginal communities go deeper than juveniles running wild.

Brennan’s reflections on helping defend a Queensland Aborigine named Alwyn Peter on a charge of murdering his wife Deirdre are enlightening. Brennan, who is both a man of God and a practising lawyer, recalled how his pride at having the charge reduced to manslaughter ‘and obtaining a sentence which guaranteed Alwyn almost immediate parole’ soon turned to self-doubt. Two items of information led him to reconsider his attitude:

- An unnamed anthropologist told him soon after the verdict that ‘In a reserve situation like Weipa, there is no customary law sanction to protect Deirdre and women like her.’

- Langton told the Royal Commission into Deaths in Custody that ‘the appalling level of domestic violence against Aboriginal women is not being addressed by Aboriginal Law ... the daily parade of women with bandaged heads and broken arms, especially in towns and larger communities where there is access to alcohol, is plain for all to see.’<sup>37</sup>

It is, of course, common to invoke alcohol as an alibi for violence. As Lee Sackett explains the position in Wiluna: ‘An inappropriately related couple who engage in sexual intercourse, a woman who breaks her mother’s arm, or a man who fractures his wife’s pelvis are permitted to write-off their wrongdoings and escape censure through the excuse of having been ‘full drunk.’ Sackett makes Wiluna seem a vile town thanks to Aboriginal drunkenness, though in his opinion Aborigines come off worse, suffering ‘broken bones’ and ‘shattered lives’ while Europeans have only to put up with ‘the taunts of drunks and occasional stones thrown in their direction.’<sup>38</sup> The place is not a good advertisement for Langton’s theory of fighting and swearing as forms of ‘dispute processing’ and ‘law maintenance’, and Sackett does not suggest that it is.

Colin Tatz, in a cry of despair over the modern Aboriginal malaise, claimed that a ‘great deal’ of violence and child neglect has a basis in tribal tradition. He drew a distinction between ‘rough, physical injurious treatment within traditional culture’ and what he called ‘the new violence’: ‘homicide, suicide, parasuicide and self-mutilation; ... rape, child-molestation and incest.’<sup>39</sup> But if customary law is compatible with the older manifestations of violence, why look to it to suppress the newer manifestations?

The gruesome descriptions given by some recent writers are puzzling to anyone who remembers the Aboriginal communities of remote Australia in the 1960s. Why this rapid degeneration and what can be done about it? I am not aware of any convincing answers, but I can see no reason to believe that restoring customary law, even if this were any longer feasible, would reverse these dismaying trends. Like the curate’s egg, customary law is good in parts, bad in others, and it is certainly no cure-all for modern ills.

## **The Goodness of Customary Law**

When customary law is mentioned by supporters of reconciliation and advocates of a treaty it is often spoken of as if it were an unqualified good. But doubts about customary law are not new and are by no means limited to Australia. They plagued the American anthropologist Hoebel after he and the lawyer Karl Llewellyn, with whom he had earlier collaborated in a celebrated study of the Cheyenne Indians, undertook research among Pueblo Indians between 1944 and 1950. One objective was to see whether codifying Pueblo law might bolster Pueblo autonomy by helping fend off interference, often ignorant and officious, by American courts and administrators. But as the nature of social control in these colourful, ancient and isolated communities became clearer, Hoebel lost enthusiasm. Far from agreeing with Ruth Benedict’s opinion that Pueblo Indians existed harmoniously thanks to ‘an intense degree of social integration [being] maintained by personal internalisation of norms of social cooperation’, he was repelled by their techniques of control and by the way in which ‘the vested guardians of the law’ persecuted dissenters. As in other ‘societies based on dogmatic ideology’—Hoebel

had the Spanish Inquisition and totalitarian police states in mind—Pueblo law relied on ‘repressive authority to maintain order and conformity of belief and action to the law.’<sup>40</sup>

*Both Sides of the Moon*, another of Alan Duff’s scarifying novels of Maori life in New Zealand, is witheringly sceptical of elders and other figures of authority. The main character, a delinquent imprisoned for a brutal assault, sums up the psychiatrist who is interviewing him:

If this man had been Maori and in past times, he’d have been on the council of wise elders. If he’d lived in medieval times he’d be an inquisitor. In both instances dishing out injustice. Planned or by consensus. Or he would be the tohunga [Maori priest] weaving his manipulative magic and seeing omen wherever it was expedient.<sup>41</sup>

This insight would have rung a bell with Kaberry. Her point about the difficulty of distinguishing between legally invested power and power in practice was made about relations between man and wife, but it can be generalised to other areas of social life. How to distinguish acts done in accordance with law from acts backed by greater strength or driven by political ambition? With the disconcerting candour which came so easily to her, Kaberry stated that ‘the guardians of tribal law frequently break it’.<sup>42</sup> What she must have meant was not that the guardians were ignorant of the law but that they were ready to disregard it when it suited their interests. They did not subvert the law by questioning its authority, but were led by expediency to evade its application to themselves, while no doubt enforcing it on others.

Considerations of this kind take us a long way from a government of laws and not of men. The vagaries of personal whim or influence are indelibly present. But even if Kaberry and Duff were mistaken in their judgments or were describing men and leaders corrupted by power, it would not follow that the rule of law is an unqualified good among Australian Aborigines or Hoebel’s Pueblo Indians or anyone else. Gore Vidal’s observation that Americans ‘are now indeed a nation of laws, mostly bad and certainly antihuman’<sup>43</sup> may seem over the top, but it points up the weakness of praising the rule of law while turning a blind eye to the content of the laws.

## **The Meaning of Recognition**

What would it mean to recognise Aboriginal customary law? The concept of recognition has no agreed meaning in Australia. Sometimes it seems to mean no more than acceptance, by non-Aborigines, of the fact that Aborigines often have beliefs and practices of their own (in much the same way as it is accepted that some Muslim women dress and behave in a manner marking them off from other women). For example, there are Aboriginal communities in which marriage to a close cousin is deplored, a man and his mother-in-law are expected to avoid each other and there is a feeling that men’s things should not be talked about when women are present and women’s things when men are about. These are indicators of social boundaries within a community or between it and other communities within the same country. Most people would see such instances as innocuous. With them in mind we can distinguish two forms of recognition, a stronger and a weaker.

The weak version of recognition accepts that distinctive practices exist and would refuse to use legislation or the courts as weapons against them merely because the people who follow those practices are thereby and necessarily different from the rest of the population. In effect, recognition would be a technique for respecting cultural differences. It might be advocated for that reason. Two points can be made about weak recognition. On the one hand, it does not require outsiders to take any steps in support of customary law, for it is only a matter of the voluntary observance of practices which no one is likely to regard as harmful (if they did, the onus would be on them to make out a case). indeed, there is little to be gained by using the word 'law' when talking about this situation since it is one of cultural rather than legal pluralism. On the other hand, to respect distinctive practices (in the sense of accepting their existence in a spirit of live and let live) is not the same as admiring them. They might be admired, but equally well they could be regarded with indifference or dismissed as silly or outdated. These are common responses to other people's practices, but they need not give rise to a feeling that the practices should be made compulsory (because beneficial) or suppressed (because harmful).

The weak version of recognition is innocuous and unlikely to cause controversy. It is possible to go much further, however, and adopt a strong version raising hard questions. Distinctive practices would become obligatory and enforceable by law, at least within the community or subculture to which they belonged. The motive might again be respect for cultural differences, but now the respect would carry a punch. It is precisely here that difficulties begin. Brennan saw as much when he wrote that 'Today, Aboriginal law and culture remain strong only while they hold appeal or can be imposed without human rights violations'.<sup>44</sup> Should a community or subculture, through its elders or some other mechanism which it claims as its own, be empowered by the wider society to compel conformity and, if so, should there be limits to what is enforced and to the methods used? The questions are universal. They do not apply to Aboriginal customary law in particular, though they need to be posed with reference to it because of the place it is taking in debates over the amelioration of Aboriginal ills and the direction of Australian society.

I am opposed to strong recognition, partly because of the authoritarianism and illiberality which would be required to carry it through and partly because the tide of history has washed away cultural unity, leaving many Aboriginal communities a bit of this and a bit of that so far as their culture is concerned. They are not necessarily the poorer for it, and even if they were, the strong recognition of customary law could be a cure more drastic than the disease. Weak recognition is on a different footing. It adds the spice of variety to the wider society, but does not require intervention by the law or the making of grand political pronouncements or compulsory conformity or the conquest of the high moral ground. For those reasons it will be less inspiring in some people's eyes, but it is none the worse for that.

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