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The Academy of the Social Sciences in Australia was established in 1971. Previously, some of the functions were carried out through the Social Science Research Council of Australia, established in 1942. Elected to the Academy for distinguished contributions to the social sciences, the 396 Fellows of the Academy offer expertise in the fields of *accounting, anthropology, demography, economics, economic history, education, geography, history, law, linguistics, philosophy, political science, psychology, social medicine, sociology and statistics*.

The Academy's objectives are:

- to promote excellence in and encourage the advancement of the social sciences in Australia;
- to act as a coordinating group for the promotion of research and teaching in the social sciences;
- to foster excellence in research and to subsidise the publication of studies in the social sciences;
- to encourage and assist in the formation of other national associations or institutions for the promotion of the social sciences or any branch of them;
- to promote international scholarly cooperation and to act as an Australian national member of international organisations concerned with the social sciences;
- to act as consultant and adviser in regard to the social sciences; and,
- to comment where appropriate on national needs and priorities in the area of the social sciences.

These objectives are fulfilled through a program of activities, research projects, independent advice to government and the community, publication and cooperation with fellow institutions both within Australia and internationally.

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President's column

The Pontifical Academy of the Social Sciences

The Pontifical Academy of the Social Sciences invited me - as President of a sister Academy - to participate in its 10th birthday celebrations. In the end, the Vatican being a long way from Adelaide, they welcomed me as a participant in their entire symposium for 2004. The Symposium was held at the Vatican from 28 April to 3 May, with the theme of 'Intergenerational Solidarity'.



The Pontifical Academy has similarities to, and differences from our own. It is much smaller, comprising at most 40 people. Its gender ratio favours men much more than does ours. It has, as part of its purpose, the charter of drawing on the insights of the social sciences to enrich the thinking of the Catholic Church on social issues. Members are appointed by the Pope, drawn from a small number recommended by the Council of the Academy. They need not be Catholic (a number are not) and they come from all corners of the world. They must, naturally, be distinguished social scientists, though not all are academics. They are drawn principally from the disciplines of sociology, economics, law and politics. The economists amongst us will recognise the Nobel Laureates Edmund Malinvaud and Kenneth Arrow, who are distinguished members, while Joe Stiglitz had just been appointed. I was delighted to find among the members one of our own Fellows, George Zubrzycki, who has been a member for many years. His presence at the meeting helped to make me feel particularly welcome and his contribution to the debates did our Academy proud.

Like our Academy, the Pontifical Academy comprises people who have made major contributions to the social sciences and retain a lively intellectual interest in major contemporary issues. Members take their role very seriously, as did the two invited speakers (Jacques Vallin - Chair of the International Union for the Scientific Study of Population, and Francis Fukuyama - the prolific and influential, political scientist). Most contributions to the Symposium were provided in writing in advance (no doubt in part to facilitate the simultaneous translation into English, French and German). This enabled the President (Professor Mary Ann Glendon, a lawyer from Harvard) to prepare a draft summary and evaluation of the main contributions to the theme of intergenerational solidarity. This initial draft was then modified in the light of the spontaneous contributions during the Symposium. Her insightful summary was of great value to members, but was also motivated by the requirement of the Pontifical Academy to go beyond reflection to provide tools for analysis and evaluation of concrete contemporary issues. The Academy does not attempt to do this on the basis of one symposium. Instead, it uses an initial symposium to canvas the issue, then establishes a working party comprising a sub-set of its members, who work diligently over several years to produce a final document on the topic that the whole Academy is invited to discuss and endorse.

The Pontifical Academy is concerned to deal with major social issues. Unlike our Academy, it pays attention to the social teachings of the Catholic Church in deciding what are the major issues. But it is interesting nonetheless to report the topics they have chosen to bring into focus in their first 10 years. We also need to reflect on this

question - what are the major social issues? - when we choose topics for the ARC Learned Academies grant applications; when we choose the topic for our annual symposium; when we contribute to discussions of the National Academies Forum; when we commission and publish *Occasional Papers* and when we respond to requests from Government for advice (for example, on the setting of the National Research Priorities). The Pontifical Academy has to date selected only four topics, since each forms the basis for several years' research. The topics are:

- Work;
- Democracy;
- Intergenerational solidarity; and
- The meaning of the human person (for 2005).

The topic of Intergenerational Solidarity encompasses several of the themes of the Australian National Research Priorities: such as the implications of the changing demographic structure of populations; the obligations between different generations and the capacity to meet those obligations (including care for children); and the environmental inheritance passed from one generation to the next. To the Pontifical Academy, it meant using the lens of solidarity (care for the vulnerable and the motivation of civic friendship) to understand and evaluate the emerging relations between the generations, viewed as individual family histories and as national demographic changes. The crisis in the European welfare state attracted a lot of attention, as did the changing nature of families and how to ensure a future orientation among adults who neither have, nor intend to have children.



The intellectual exchange was exhilarating. In addition, it was a rare opportunity to spend 5 days within the walls of the Vatican, experiencing its tranquillity in the middle of the pressures of modern Rome, its historical architecture and its formal gardens. I was also generously included among the Pontifical Academy members in their audience with the Pope, to whom I was introduced as President of the Australian Academy.

Reflections

The Pontifical Academy contains outstanding scholars and other thinkers, who put a great deal of care and effort into their contributions to the work of that Academy. Their thinking is sharpened by the objective of producing reasonably concrete conclusions that will assist the Catholic Church in the development of its social teaching on major issues. This requirement to go beyond the life of the mind for its own sake, to more instrumental outcomes, is pertinent to our own Academy.

Such an approach could reasonably be applied to the request to our Academy from the Government for more policy-relevant thinking, under our recent Higher Education Innovation Program (HEIP) grant. It would be beneficial in promoting genuine integration of the insights of different disciplines, partly because it requires descent

from very abstract language and intellectual space to more concrete realms. The potential to have an influence for the good on policy and outcomes is clearly one motivation for the voluntary effort of the members of the Pontifical Academy, as it is for our Fellows.

The Pontifical Academy process of nominating a major theme, having an initial symposium on the topic (where contributions from members are supported by those from several invited scholars), appointment of a smaller team to work solidly on the topic and having at least one further symposium on the topic, leading finally to publication, has much to recommend it. It suggests to me that we could consider making more systematic use of our own programs to develop deep thinking on a small number of major topics. We could, for example, use a combination of workshops and an ARC-funded research program to develop material for final presentation and discussion at our annual symposium. This symposium could be invited to develop (perhaps with written contributions in advance) some specific and concrete policy recommendations.

I encourage anyone who has thoughts on these issues to contact me (sue.richardson@flinders.edu.au, or 08 8201 2636) with your ideas. I would love to hear from you.

Among the many other things that have kept the Academy busy over the past few months I must mention the inauguration of the Council of the Arts, Humanities and Social Sciences (CHASS). The initiative for CHASS came largely from the Academy of the Humanities (which was successful in obtaining an initial grant from the Commonwealth to assist its establishment). The initiative was actively supported by our Academy, by the Deans of Arts, Social Sciences and Humanities, and by the Australian Council of University Art and Design Schools. Its Executive Director, Toss Gascoigne, has had years of experience with its science-based sister. On 15-16 June, CHASS held its inaugural event and general meeting. The event was HASS on the Hill - a day in which people from the HASS sector met in ones and twos with individual members of the Commonwealth Parliament, at Parliament House. The Minister for Education, Brendan Nelson, hosted a breakfast at which he announced that CHASS would be provided with continuing support (\$200,000 pa for four years) together with a substantial amount of money (of the order of \$500,000) to undertake an evaluation of the innovative contributions of the humanities, arts and social sciences, somewhat along the lines of the recent mapping of innovation in the science and technology sector.

HASS on the Hill was a great success, with over 200 scholars participating. It was followed by an inspiring address by Iain McCalman, President of the Academy of the Humanities, at the National Press Club, in which Iain provided a beautifully crafted and compelling case for the economic as well as cultural importance of our sector. Iain's address can be found on the CHASS website, www.chass.org.au. I chaired the inaugural general meeting of CHASS that followed the Press Club address. At this meeting, a full Board of CHASS was elected and the Constitution adopted, and the interim Board, of which I was a member, stepped aside. The new Board is chaired by Malcolm Gillies, of the Academy of Humanities. Our Academy will continue to support the work of CHASS as it develops a program to best represent the interests of our sector.

Sue Richardson

The Abolition of ATSIC: Silencing Indigenous Voices?

Ensuring Meaningful Participation of Indigenous Peoples in Government Processes: The implications of the decline of ATSIC

William Jonas and Darren Dick¹

For the past eighteen months, public debate about Indigenous affairs has centred on the operation of the Aboriginal and Torres Strait Islander Commission (ATSIC).

From the political debates surrounding the Commission's leadership, to the so-called 'separation of powers' directions, creation of the new executive agency Aboriginal and Torres Strait Islander Services and the ATSIC Review process, barely a day went by without ATSIC making the news. When the federal opposition 'trumped' the government by announcing in March 2004 that it would abolish ATSIC and replace it with a new representative body, the stakes were raised. The government's response was not entirely unexpected – it too would abolish ATSIC but it would not replace it with a new representative body. The days of 'separatism', as the Prime Minister and the Minister for Indigenous Affairs described it, were over and a new age of mainstream service delivery to Indigenous people would soon commence.

This article explores one of the main challenges raised by the government's announcements. It considers what is really at stake with the proposed abolition of ATSIC and mainstreaming agenda – namely, the meaningful participation of Indigenous peoples in decision making processes. The announcement by the federal Government that it intends to abolish ATSIC scapegoats it for the failures of successive Australian governments. The government's announcement reveal no plans for addressing the crisis in Indigenous communities and will further disempower Indigenous peoples, while further reducing the level of scrutiny of the government's performance on Indigenous issues from the eyes of the nation.

From reform to repeal of ATSIC

Much of the focus on Indigenous issues in 2003-04 has centred on the performance of ATSIC and proposals for reforming its structure and functions.

In December 2002 and February 2003, the Minister for Immigration, Multicultural and Indigenous Affairs issued directions to ATSIC aimed at preventing conflicts of interest in funding decisions by ATSIC's elected officials. These directions prevented ATSIC from making grants or loans, or offering contracts or guarantees to organisations in which ATSIC full-time office holders were directors or in which they had a controlling interest. The purpose of the directions was to address both 'the perception of conflicts of interest in ATSIC' and 'the potential for serious conflict of interests'.²

Prior to allowing ATSIC to implement the directions, the Minister then announced on 17 April 2003 that the government had decided to strip ATSIC of over \$1 billion in funding by creating a new executive agency to manage ATSIC's programs in accordance with the policy directions of the ATSIC Board.³ The basis of this decision was to promote good governance and accountability; address the 'current breakdown in community confidence in ATSIC'; allow ATSIC to refocus its attention on 'more

significant policy issues' rather than be distracted by 'the micro-management focus on ATSIC's own spending'; and to enable the Board and Regional Councils to take 'a more strategic approach in future so that their influence is extended'.⁴ The newly created Aboriginal and Torres Strait Islander Services (ATSIS) commenced operations on 1 July 2003.

The Minister declared that the creation of ATSIS was to be an 'interim' measure pending the outcomes of the review of ATSIC announced in November 2002. In announcing the ATSIC Review, the Minister had noted the commitment of the government to 'explore the potential for more effective arrangements for ATSIC at the national and regional level' with a 'forward looking assessment which addresses how Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programmes to assist them'.⁵ The purpose of reviewing ATSIC was to 'strengthen ATSIC... It is a unique organisation that is meant to give Indigenous people a genuine voice in policy making'.⁶

The review of ATSIC produced a discussion paper in June 2003 expressing significant concerns about the way ATSIC currently operated.⁷ In November 2003 it released its final report, *In the Hands of the Regions – a New ATSIC*, with recommendations for reform. The final report found that:

ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and to be an agent for positive change in the development of policy and programs to advance the interests of Aboriginal and Torres Strait Islander Australians.⁸

They also concluded that ATSIC 'is in urgent need of structural change' and that it: needs the ability to evolve, directly shaped by Aboriginal and Torres Strait Islander people at the regional level. This was intended when it was established, but has not happened. ATSIC needs positive leadership that generates greater input from the people it is designed to serve. One of its most significant challenges is to regain the confidence of its constituents and work with them and government agencies and other sectors to ensure that needs and aspirations are met. ATSIC also has to operate in a fashion that engages the goodwill and support of the broader community.⁹

Perhaps the central finding of the ATSIC Review Team was the identified need to improve the connection between ATSIC's regional representative structures and national policy formulation processes:

As it currently operates, the review panel sees ATSIC as a top down body. Few, if any, of its policy positions are initiated from community or regional levels. The regional operations of ATSIC are very much focused on program management. To fulfil its charter, engage its constituency and strengthen its credibility, ATSIC must go back to the people. The representative structure must allow for full expression of local, regional and State/Territory based views through regional councils and their views should be the pivot of the national voice.¹⁰

Ultimately, the ATSIC Review Team made 67 recommendations which broadly address issues of the relationship between ATSIC and Indigenous peoples, the federal government, the states and territories, and between its elected and administrative arms.¹¹

Within six months of the report of the ATSIC Review Team, the government position had changed from one of strengthening ATSIC to one of abolishing it. In May 2004,

the government announced that ATSIC was to be abolished in two stages, with the national board to cease to exist in 2004 and the regional councils in 2005. Alongside the Bill, the government has announced that it will:

- create a new Office of Indigenous Policy Coordination within the Department of Immigration, Multicultural and Indigenous Affairs;
- progressively replace existing ATSIC and ATSIS offices with Indigenous Coordination Centres; and
- establish a national Indigenous advisory council, to be appointed by the government and which will have no legislative mandate.

The government has announced that it will mainstream services formerly delivered by ATSIC (and in the past twelve months, ATSIS) and have indicated that they will (or have already commenced to):

- transfer programs from ATSIS to mainstream government departments and agencies;
- establish a Ministerial taskforce on Indigenous Affairs; and
- establish a Secretaries Group for Indigenous Affairs.

In making these announcements, the Prime Minister stated the government's position that its goal is 'to improve the outcomes and opportunities and hopes of Indigenous peoples in areas of health, education and employment' and that:

We believe very strongly that the experiment in separate representation, elected representation, for Indigenous people has been a failure... (ATSIC) has become pre-occupied with... symbolic issues and too little concern with delivering real outcomes for Indigenous peoples... [W]e should renew our commitment to the challenges of improving outcomes for Indigenous people in so many of those key areas.¹²

The government has since introduced the *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004* to the federal Parliament to abolish ATSIC. The opposition parties in the Senate have sent the Bill to an inquiry by the newly created Senate Select Committee on the Administration of Indigenous Affairs with a report due in October. In practical terms, this means that ATSIC continues to exist – although the government has administratively de-funded it of all program responsibilities and left it with a minimal budget.

The justification for abolishing ATSIC – some concerns

We consider that the government's announcement raises significant human rights concerns. Before discussing these, however, it is important to make some observations about the government's actions and the way they have sought to justify them.

The approach of the government over the past twelve, and particularly three, months has had a destabilising effect on ATSIC and has engineered its ultimate demise. From a practical perspective, it is unlikely that ATSIC in its current form can now continue as a viable organisation that enjoys the confidence of the Australian community. The choice faced by the Senate Committee is in reality one between the abolition of ATSIC and the creation of a new national Indigenous representative voice.

The Government has *de facto* already abolished ATSIC through administrative action. The approach of the government in putting into place arrangements to transfer program responsibilities from ATSIC and to de-fund it from the beginning of the 2004-

05 financial year, without the scrutiny of the Parliament, is breathtaking in its audacity and lacks transparency and accountability.

These actions do not, however, suggest that the passage of the *ATSIC Amendment Bill 2004* should be automatic – the (somewhat belated) inquiry of the Senate should be fully utilised to determine a vision for the future of Indigenous representation within government.

The government's justifications for abolishing ATSIC are also unable to be substantiated. For example, numerous comments by members of the government have scapegoated ATSIC for failures in service delivery in areas over which ATSIC has no responsibility – such as Indigenous health and education. The vast majority of ATSIC's funding had been quarantined for particular program responsibilities, with limited ability to address a range of key issues facing Indigenous peoples. ATSIC is now being blamed for lack of progress by government in addressing issues for which it has no program responsibility.

Health, for example, has been a mainstream government responsibility since 1995. During that time we have seen chronic under-funding of Indigenous health services, estimated to total approximately \$350 million per year, and a worsening in key indicators of health status and only marginal improvements in others. Mainstream approaches to health service delivery have not been working for the last decade.

The story is the same with education and employment program – both are mainstream government responsibilities (with the exception of the CDEP scheme which ATSIC and then ATSIS ran). There has been very little progress in reducing the inequality gap between Indigenous and non-Indigenous people in these areas over the past five years.

This type of scapegoating has been a constant challenge faced by ATSIC throughout its existence. As the report of the ATSIC Review Team found:

ATSIC was intended to be a supplementary funding body and was never intended, or funded, to be the provider of all programs and services to Aboriginal and Torres Strait Islander people. Its establishment did not absolve mainstream agencies from their responsibility to meet their obligations to Indigenous citizens. The hopes pinned on the organisation – that it could and would effect instant change were not realistic.¹³

As a consequence:

mainstream Commonwealth and State government agencies from time to time have used the existence of ATSIC to avoid or minimise their responsibilities to overcome the significant disadvantage of Aboriginal and Torres Strait Islander people. Because public blame for perceived failures has largely focused, fairly or unfairly, on the Aboriginal and Torres Strait Islander Commission, those mainstream agencies, their ministers and governments have avoided responsibility for their own shortcomings.¹⁴

Perhaps the most inexplicable aspect of the government's decision to abolish ATSIC, however, is the suggestion that it was in response to and in accordance with the findings of the ATSIC Review Team's report.

The final report of the ATSIC Review Team unambiguously supports the continuation and strengthening of ATSIC's mandate and functions. The ATSIC Review Team recommend, for example, that a 'new ATSIC' be underpinned by the following principles:

- ATSIC should be the peak State/Territory and national body, which advocates for the development of Aboriginal and Torres Strait Islander communities;
- The ATSIC regional councils should provide the State/Territory policy interface with the governments co-ordinating regional activities;
- Representatives from each State/Territory should then constitute the national body, achieving a direct relationship between the regional, state and national levels;
- The national body should provide the policy interface for the Australian Government, setting and advocating a national strategic direction and monitoring progress against ATSIC's national plan to reinforce the accountability of program and service providers;
- ATSIC's primary focus should be on building strong local communities through development and implementation of a needs-based regional plan;
- State/Territory and national programs should be informed by, and undertake activities consistent with, regional plans;
- All government funded programs should be subject to an independent assessment of outcomes; and
- The role of elected officials should be clearly delineated from that of the administration.¹⁵

The government's decision to abolish ATSIC clearly runs counter to the findings and recommendations of the ATSIC Review Team. It is deeply dishonest for it to suggest otherwise.

'Separatism' and the participation of Indigenous peoples – human rights concerns about the abolition of ATSIC

In a political climate of such deceit, it is easy to forget how significant a regression the position of the current federal government is from the time when ATSIC was created.

ATSIC was intended to recognise the special place of Indigenous people in Australian society, the need for processes to address the ongoing discrimination against Indigenous peoples as well as the deeply entrenched historical disadvantage that continues to be experienced by Indigenous peoples.

This intention of the federal Parliament is recorded in the preamble to the *Aboriginal and Torres Strait Islander Commission Act 1989*. Unexpurgated, the preamble reads as follows:

WHEREAS the people of Australia voted overwhelmingly to amend the Constitution so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race;

AND WHEREAS the people whose descendants are now known as Aboriginal persons and Torres Strait Islanders were the inhabitants of Australia before European settlement;

AND WHEREAS they have been progressively dispossessed of their lands and this dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal persons and Torres Strait Islanders concerning the use of their lands;

AND WHEREAS it is the intention of the people of Australia to make provision for rectification, by such measures as are agreed by the Parliament from time

to time, including the measures referred to in this Act, of the consequences of past injustices and to ensure that Aboriginal persons and Torres Strait Islanders receive that full recognition within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire;

AND WHEREAS it is also the wish of the people of Australia that there be reached with Aboriginal persons and Torres Strait Islanders a real and lasting reconciliation of these matters;

AND WHEREAS it is the firm objective of the people of Australia that policies be maintained and developed by the Australian Government that will overcome disadvantages of Aboriginal persons and Torres Strait Islanders to facilitate the enjoyment of their culture;

AND WHEREAS it is appropriate to further the aforementioned objective in a manner that is consistent with the aims of self-management and self-sufficiency for Aboriginal persons and Torres Strait Islanders;

AND WHEREAS it is also appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government;

AND WHEREAS the Parliament seeks to enable Aboriginal persons and Torres Strait Islanders to increase their economic status, promote their social well-being and improve the provision of community services;

AND WHEREAS the Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms through:

(a) the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and

(b) the acceptance of the Universal Declaration of Human Rights...¹⁶

Furthermore, section 3(a) of the *ATSIC Act* states that, 'in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society', one of the objects of the Act is 'to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.

These provisions, in the absence of any constitutional recognition of Indigenous peoples, formalised status for the Council for Aboriginal Reconciliation's *Australian Declaration Towards Reconciliation*, or treaty process, remain one of the few significant legislative recognitions of the status of Aborigines and Torres Strait Islanders in Australia (along with the preamble of the *Native Title Act 1993* and preamble of the *Aboriginal Land Rights (Northern Territory) Act 1976*. Perversely, but thankfully, the *ATSIC Bill 2004* does not propose abolishing the preamble or part 1 of the *ATSIC Act*.

However, recent comments made by some senior members of the government (in the course of announcing the intention to abolish ATSIC) raise significant concern about the commitment of the government to recognising and providing content to the factors reflected in the preamble and first part of the Act. Some members of the government have suggested that ATSIC has resulted in some form of special treatment for Indigenous peoples (or indeed as a system of 'apartheid') and a regime of 'separatism'. In the alternative, these members of the government have emphasised the need for sameness of treatment for Indigenous peoples.

At core, these comments reveal that what is at stake is the legitimacy of participation of Indigenous peoples in government processes.

While there are large inconsistencies in the arguments used by the government in this regard (the government freely admits that Indigenous peoples experience great levels of disadvantage and inequality on the one hand and suggests that they are somehow privileged on the other hand), what is of particular concern is the significant shift away from the recognition provided by the *ATSIC Act* in 1989 of the appropriateness of representative structures to maximise Indigenous participation in government decision making processes.

There are many objections that can be made to the government's approach. Of particular concern, however, are issues of non-compliance with human rights standards. This occurs in two ways.

First, processes of representation for Indigenous peoples can be classified as a special measure under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 1(4) of ICERD provides that:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Section 8(1) of the *Racial Discrimination Act 1975* incorporates this article of ICERD in domestic Australian law. It confirms that special measures are an exception to the prohibition of racial discrimination.

Accordingly, a form of differential treatment such as the establishment of a representative body to ensure the participation of Indigenous peoples in decision making processes that affect them, is consistent with principles of equality before the law and non-discrimination. It is justifiable under international law.

Indeed, there is an argument that it may be more than simply justifiable, but indeed necessary. Article 2(2) of ICERD places a positive obligation – that is, a *requirement* – on States Parties to the Convention to adopt special measures to address discrimination in the provision of economic, social and cultural rights to groups defined by race. This provision suggests that it would be inappropriate to discontinue activities that constitute a special measure prior to those activities having achieved their stated objective of removing inequalities in the enjoyment of human rights by Indigenous peoples.

There can be no doubt that such inequalities continue to exist for Indigenous peoples. As detailed in Appendix one of the *Social Justice Report 2003*,¹⁷ there remain significant inequalities across many areas of life for Indigenous peoples and the inequality gap between Indigenous and non-Indigenous peoples has widened over the past five years on many key indicators.

Second, the replacement of ATSIC with a non-elected, appointed advisory council (which lacks a legislative mandate) also raises concerns of lack of compliance with Australia's international human rights obligations.

The Committee on the Elimination of Racial Discrimination (which operates under the ICERD) has noted that indigenous peoples across the world have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and that as a consequence, the preservation of their culture and their historical identity has been and still is jeopardised.

To address this, the Committee has called upon States parties to ICERD to 'ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent'.¹⁸

In light of the continuing discrimination and inequality experienced by Indigenous peoples in Australia, it is likely that the Committee would consider the abolition of ATSIC, without the informed consent of Indigenous peoples, and its replacement with an appointed, non-representative council as in breach of Article 5 of the ICERD.

When Australia most recently appeared before this Committee in March 2000, the Committee expressed concern at the inequality experienced by Indigenous people in Australia and recommended that the government not institute 'any action that might reduce the capacity of ATSIC to address the full range of issues regarding the indigenous community'.¹⁹

Australia next appears before the Committee on the Elimination of Racial Discrimination in March 2005 where this issue is likely to be central to their consideration of Australia's compliance with its international obligations under ICERD.

The abolition of ATSIC and its replacement by the proposed advisory council is also potentially in breach of Australia's obligations under common Article 1 of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Article 1 provides that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.²⁰ The ability to do so is clearly constrained by replacing an elected body with a non-elected one.

Ensuring the participation of Indigenous peoples

In light of these concerns, what are some alternatives to the government's proposals for ATSIC?

The ATSIC Review provides a useful starting place. In the *Social Justice Report 2003*, support is provided by the Social Justice Commissioner to significant aspects of the findings of the review (as well as opposition to some of the Review's recommendations). Additionally, the Social Justice Commissioner's submission to the ATSIC Review Team²¹ identified priorities for improving a national, representative Indigenous body. In brief, it recommends that:

- a national representative body be maintained with a national board and regional

- councils;
- mechanisms for regional elected councils be retained and that planning processes at the local level be accorded higher priority in the formulation of national policies; and
- there be a separation between processes for setting policy priorities and the making of individual funding decisions.

It also recommends that there should be an enhancement of the powers currently exercised by ATSIC by strengthening the scrutiny role of the national representative body over service delivery and program design by other government departments. This could be achieved by:

- empowering the national body to set the objectives and guiding principles for service delivery to Indigenous peoples across all issues, but also to empower them to be able to develop legally binding directions for service delivery agencies that accord with these principles;
- requiring the Minister to table in Parliament all such directions set by the national representative body;
- providing that all directions issued by the national representative body and subsequently tabled in Parliament have the status of legislative instruments (or delegated legislation);
- requiring all government departments to include in their annual reports to Parliament information as to how they implement the directions of the national representative body in delivering relevant services and programs;
- empowering the national representative body to evaluate how government departments and agencies (at all levels) comply with these directions in delivering services;
- providing for regular scrutiny of compliance with these directions by the Australian National Audit Office or through an enhanced Office of Evaluation and Audit (previously located in ATSIS and recently transferred to DIMIA); and
- providing for scrutiny processes by the Parliament, including through the national representative body reporting to Parliament about deficiencies in department's complying with directions and for parliamentary committees to scrutinise the actions of departments through specific inquiries or senate estimate processes.

The *Social Justice Report* and ATSIC Review submission also support enhancing the structure of the national representative body for interface with state and territory governments as well as enhancing the body's powers at the regional level, with an emphasis on increasing the input at the regional and local levels to inform policy development and decision-making processes at the state/territory and national levels.

Overall, the *Social Justice Report 2003* concludes that the maintenance and strengthening of a national representative Indigenous body is:

a critical aspect in achieving the effective participation of Indigenous peoples in decision making processes and supporting sustainable development. The extent to which the government supports (this) over the coming year to more effectively drive an agenda for change, including by providing (the national

representative body) with sharper legislative powers, will be the litmus test of their commitment to achieving sustainable improvements in Indigenous communities²².

Government accountability and mainstreaming – a brief comment

This article has only examined one of the critical issues that has been raised by events of the past eighteen months relating to ATSIC. The second critical issue, which lies beyond the scope of this article, is processes to ensure government accountability for service delivery by mainstream government departments and agencies. We cannot, however, totally allow this issue to pass without comment.

A significant focus of recent *Social Justice Reports* has been on the adequacy of performance monitoring standards and government accountability mechanisms. In these reports, the general commitment of governments to overcome Indigenous disadvantage has been commended. Concerns have been expressed, however, that sufficient steps are not being taken to introduce appropriate and adequate performance monitoring mechanisms, including benchmarks and targets to achieve them.

The *Social Justice Report 2003* noted the development of significant measures for advancing reconciliation within the framework of the Council of Australian Governments. The national reporting framework on Indigenous disadvantage and whole-of-government trials under COAG are in fledgling stages and there are a number of issues that remain to be addressed before success is assured.

These initiatives of COAG have not, however, been backed up by a range of other commitments and processes that are necessary to ensure the long-term sustainability of improvements in the well-being of Indigenous peoples. There remains an absence of an appropriate national commitment to redressing Indigenous disadvantage, sufficiently rigorous monitoring and evaluation mechanisms, and benchmarks with both short-term and longer term targets agreed with Indigenous peoples. There are also critical issues relating to the depth of inequality experienced by Indigenous people, the size and growth of the Indigenous population and under-resourcing of services and programs, that cannot continue to be ignored if there is to be any genuine improvement in Indigenous peoples' circumstances.

Ultimately, the *Social Justice Report 2003* concluded that:

the process of practical reconciliation is hampered by its lack of a substantive action plan for overcoming Indigenous disadvantage in the longer term, with short-term objectives to indicate whether the rate of progress towards this goal is sufficient.

At this stage, it is not possible to foresee a time when 'record levels of expenditure' of the Commonwealth on Indigenous services will not be necessary. It is also not possible to foresee a time when a continuation of the current approach will result in significant improvements in the lives of Indigenous peoples. Practical reconciliation does not have a plan for *overcoming* rather than simply managing Indigenous disadvantage.²³

This lack of substantive action plans and processes for overcoming Indigenous disadvantage will no doubt be obscured by the emphasis on reconfiguring government service delivery through mainstream government departments over the next twelve months. There is very little in the government's announcement to suggest that they are seriously addressing this major deficiency of their current approach. This

will need to be addressed if we are to make any substantive progress in key areas of well-being for Indigenous peoples into the future.

By next year, when the 'bureaucratic dust' has settled from the large scale reconfiguration of programs currently underway, there will be no ATSIC to blame for failure to achieve results. But there will also be no ATSIC to monitor government performance and to hold governments accountable for their failings. We will have to wait and see whether enough is done to ensure appropriate accountability mechanisms, but the preliminary steps suggests that this will not be the case.²⁴

Conclusion

Nothing less than the recognition of the status of Indigenous peoples as the first peoples of this land with distinct needs is at stake with the abolition of ATSIC. It is one thing to suggest that ATSIC could perform its obligations to Indigenous peoples better; it is another thing entirely to suggest that there should not be a national representative body through which Indigenous people can participate in government decision making about their lives.

The abolition of the nationally elected representative Indigenous body ensures that the government will only have to deal with Indigenous peoples on its own terms and without any reference to the stated aspirations and goals of Indigenous peoples. It means that the government only has to talk to select Indigenous people when it chooses to and only on issues that it wishes to engage.

Increased Indigenous participation and control over decision making is essential to improving government service delivery. Ultimately, abolishing ATSIC will simply silence Indigenous people at the national level while the deeply entrenched crisis in Indigenous communities continues unabated.



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¹ This article is written by the authors in a personal capacity and does not represent the views of the Human Rights and Equal Opportunity Commission.

² Ruddock, P (2002). 'Directions to ATSIC concerning conflicts of interest', Press Release, 24 December, www.minister.immi.gov.au/atsia/media/ruddock_media02/r02080.htm

- 3 For an overview of the directions see: ATSIC, *Annual Report 2002-03*: 10-11, 17-18.
- 4 Ruddock, P (2003). 'Good governance and conflicts of interest in ATSIC', Press Release, 17 April. www.minister.immi.gov.au/atsia/media/ruddock_media03/r03028.htm
- 5 Ruddock, P (2002) *ATSIC Review Panel Announced*, Media Release, 12 November, IPS 063/2002.
- 6 *Ibid.*
- 7 Hannaford, J, Huggins, J and Collins, B (2003a). *Review of the Aboriginal and Torres Strait Islander Commission*, Public Discussion Paper – June, Commonwealth of Australia, Canberra, online at: www.atsicreview.gov.au.
- 8 Hannaford, J, Huggins, J and Collins, B, (2003b). *In the Hands of the Regions – Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Commonwealth of Australia, Canberra. (Herein ATSIC Review Report): 24 and Recommendation 2.
- 9 *Ibid.*: 5.
- 10 *Ibid.*: 32.
- 11 *Ibid.*: 8-13.
- 12 Prime Minister (2004). *Transcript of the Prime Minister, The Hon John Howard MP, Joint Press Conference with Senator Amada Vanstone*, Parliament House, Canberra, 15 April: 2.
- 13 Hannaford, et al (2003b), *op cit.*: 8.
- 14 *Ibid.*: 30.
- 15 *Ibid.*: 26.
- 16 *Aboriginal and Torres Strait Islander Commission Act 1989*, preamble.
- 17 Available online at: www.humanrights.gov.au/social_justice/
- 18 Committee on the Elimination of Racial Discrimination (1997). *General Recommendation XXIII – Indigenous people*, 18 August, UN Doc: A/52/18, annex V, para 4(d).
- 19 Committee on the Elimination of Racial Discrimination (2000). *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc: CERD/C/304/Add.101, 19/04/2000, para 11.
- 20 For a discussion on the applicability of Article 1 of the ICCPR to Indigenous Australians see *Social Justice Report 2002*, Chapter 2. Note: The Human Rights Committee affirmed its application to Australian Indigenous people in its concluding observations on Australia in July 2000: Human Rights Committee, *Concluding Observations on Australia*, UN Doc CCPR/CO/69/AUS, para 10.
- 21 Aboriginal and Torres Strait Islander Social Justice Commissioner (2003). *Submission to the ATSIC Review*, HREOC Sydney. (Herein: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to ATSIC Review*). Available online at: www.humanrights.gov.au/social_justice/submissions/.
- 22 *Social Justice Report 2003*: 105.
- 23 *ibid.*: 55-56.
- 24 For a more detailed evaluation of accountability mechanisms see: *Social Justice Report 2003*, Chapter 2; and Aboriginal and Torres Strait Islander Social Justice Commissioner (2004). *Submission to the Senate Select Committee on the Administration of Indigenous Affairs – Inquiry into the ATSIC Bill 2004*, 7 July, available online at www.humanrights.gov.au/social_justice/.



Self-determination after ATSIC

Hal Wootten

Since the settlement of Australia, the colonisers have repeatedly diagnosed and found solutions to 'the Aboriginal problem' by reference to a prevalent western narrative of the world, rather than to the specific situation, needs or wishes of Aboriginal people. The ATSIC experiment grew out of a narrative that provided a substantially bipartisan framework for policy from the early 1970s to the mid-1990s. Narratives framing earlier policies had included the triumph of western religion (missionaries converting Aboriginals as part of the Christianisation of the world); the triumph of superior races (Aboriginals dying out as an inferior race); and the triumph of Western civilisation (assimilation). Each ran its course and in the early 1970s yielded to a new narrative of moral enlightenment. In contrast to earlier narratives, it did not overtly privilege the race, religion or civilisation of the colonisers, but rather a set of liberal ideas that became particularly powerful amongst them after the Second World War, when racism, colonialism and authoritarianism were discredited. Progress was still assumed to be possible and desirable, and achievable by government action, but was redefined in terms of the triumph of this set of ideas, and of institutions that would express them.

The resultant ideology favoured racial equality, cultural relativism, democracy, nationhood and self-determination, and after successful demolition of the colonial system across most of the world, was turned to the situation of indigenous peoples. In Australia these ideas called for an Aboriginal nation with a representative, democratically elected national body. The desirability of such a body was obvious to all good-thinking liberals. Any ideas that it might be ill-suited or premature for Aboriginals used to local, kinship based societies without representative or democratic or national institutions, that they might have their hands full with immediate local or regional problems, or that they would need time to accept and absorb the ideas of impersonal public interest, representation and accountability embedded in the proposal, were scarcely thinkable in the mood of the times, and if uttered would have been dismissed as racist denigration. Even the repeated Aboriginal assertion that they saw themselves as 'nations' rather than 'a nation' could not be taken seriously. Nor could acknowledgement be given to the tremendous burdens that making such an institution work would place on a small population that had long been marginalised from education and the social participation that would provide opportunities to gain relevant experience and skills. To question their capacity would also have smacked of racial denigration.

After two earlier and less ambitious experiments - the National Aboriginal Consultative Committee from 1973 to 1977 and the National Aboriginal Conference from 1977 to 1986 - ATSIC was foreshadowed in 1987 and established in March 1990. Under its first two distinguished nominated chairs it maintained a measure of respect, but thereafter its national face became an embarrassment to many blacks as well as whites. This, rather than its actual performance in advancing Aboriginal interests, made its abolition possible. Its control over the funding of organisations had meant that it could not be ignored, but it never attracted widespread support amongst Aboriginals. However the peremptory announcement, by a Government seen as unsympathetic to Aboriginal aspirations, that ATSIC would be replaced by a panel of handpicked advisers caused many of its critics to rally to its defence. As might be expected, its regional arms sometimes attracted greater respect and support.

Aboriginal well-wishers are still coming to terms with the fact that the narrative that took hold in the 1970s has, like its predecessors, failed to culminate in a 'solution' to the Aboriginal problem, as evidenced by the much-quoted statistics of disadvantage and the severe difficulties in many Aboriginal communities. Some have blamed ATSIC for the failure, but ATSIC was more a symptom than a cause. Some of the problems lie deeper, in inherent conflicts within the ideology that underlay its establishment. On the one hand Aboriginal society was expected to act as a nation with impersonal institutions, but on the other hand to cherish its local and kinship based character. Aboriginals were expected to make the cultural changes needed to compete in a modern, capitalist and highly technological world while at the same time preserving an ancient culture. They were expected to gain education, vocational skills and jobs that are available only to the mobile, yet cleave closely to their traditional land, which usually lacked the economic viability to support their rapidly expanding populations. Although recognised as having been marginalised from education and administrative and business experience, Aboriginals were expected to be instantly capable of managing large institutions and budgets by the mere fact of their Aboriginality. The ideology offered universal causes to fight for – human rights, a treaty, reconciliation – but no answers to the crippling daily problems of life in many Aboriginal communities.

Lingering notions of the noble savage, remnants of a romantic and relativistic approach to culture that often privileges what is believed to be ancient or primitive, a knee-jerk reaction to 'assimilation', and a defensive reaction to any whiff of 'blaming the victim', combined to confuse the ideology. One feature of the resultant discourse is the frequent presentation of Aboriginals as confronted by a choice between two fixed entities: the highly praised Aboriginal culture and a materialistic modern 'white' culture. It forgets that a group's culture is necessarily the way it lives today in response to today's challenges, and that its culture is changed every day by choices its members make and by things beyond their control. Whether we are white or Aboriginal, we can admire or study or even draw on the culture of our ancestors, but we cannot sensibly live it. Assimilation had a bad name because under that rubric changes were sometimes cruelly enforced, children separated from parents, Aboriginal achievement and identity denigrated, and no choices permitted. But we should not allow the resultant horror or guilt to obscure the fact that we all have to live in a changing world not of our choosing, and assimilate to its requirements, Aboriginals no less than others.

If they are to find a satisfying and dignified place in the modern world, Aboriginals have to resolve a lot of painful conflicts and dilemmas and make difficult compromises in their personal and community lives. One can only admire the remarkable body of Indigenous professionals, academics, artists, managers and the like who succeed in mainstream society while maintaining a strong Aboriginal identity. Very frequently this has meant sacrificing status in, and the experience of, community life, and the redefining of obligations to kin in non-traditional terms. Aboriginals have to make these difficult decisions for themselves and in my view non-Aboriginals should not presume to pre-empt, define or judge what particular choices or compromises are consistent with or desirable in Aboriginality. Indeed whether to maintain Aboriginal identity is itself one of the choices the individual constantly has to make, although for most Aboriginals its hold remains very strong.

The establishment of ATSIC was a classic pre-emption of Aboriginal choice by the government of the day. It involved, amongst other things, a decision to adopt a federal

structure of governance, with concomitant federal politics, rather than regional or local governance. It involved the adoption of an impersonal, democratic, representative, accountable institution with many of the assumptions of the Westminster system. It involved a decision to adopt a degree of governmental separatism, with Aboriginals looking to specific Aboriginal institutions, rather than the mainstream representative institutions at federal, State/Territory and local government level, and the mainstream departments, that served and represented citizens generally. It could not seriously be maintained that these choices were in fact made by Aboriginals, or that Aboriginal politics had even developed to a point where Aboriginals were ready to make such choices. It was simply assumed that the ATSIC structure was appropriate because it conformed to the values embodied in the dominant narrative.

The establishment of ATSIC illustrated what was at once an irony and a dilemma of the prevailing narrative. Self-determination was supposed to be the choice of its subjects, yet at the same time it was designed and conferred by the colonisers in terms of their own narrative. In accordance with usual practice, an attempt was made to paste over the contradiction by 'extensive consultation', a process that has a bad name amongst Indigenous peoples because it is invariably a process controlled by the colonisers in which they seek affirmation of their proposals. It is also flawed by the assumption that there is an Indigenous view waiting to be ascertained, when the truth often is that those involved are far from ready or equipped to resolve the issue, which may be far down the list of priorities of grassroots people, if indeed it has yet made the list.

ATSIC is of course not the only example of the failure of the policies growing out of the narrative. Partly because of failure to recognise and confront the inherent conflicts and dilemmas, partly because policies are often built on naïve ideas of culture and community, and partly because the bureaucrats have seldom been able to enter into the Aboriginal world and treat it seriously, the well-intentioned if somewhat self-righteous attempts to apply the policies have largely failed to engage the great bulk of Aboriginal people. Without that engagement, they could not succeed. Government bureaucracies, whether presided over by white ministers and officials, or by elected Aboriginals in ATSIC, have had only limited success in improving life in the communities; in some respects it has grown worse.

For those of us who do not believe we have quite reached the end of history, it is reasonable to expect that a new narrative proposing a new path to a bright Aboriginal future will emerge. It is not clear what it will be or where it will come from. The liberal Left has not really got round to admitting the failure of the present narrative, and is still crying foul and finding excuses for the failure of its initiatives, not least ATSIC. As a result it has done little to contribute to the formulation of a new narrative.

The conservatives, whose dissent from the establishment of ATSIC marked the first signs of a real break in twenty years of consensus, have however been busy developing their candidate for the new narrative in the conferences of the Bennelong Society and the publications of the Institute of Public Affairs.. Stripped to its bones, it is a narrative of the triumph of capitalist individualism. As with earlier narratives, Indigenous views do not have to be investigated, because they are laid down by the narrative, which defines what is good for its subjects, and what they will choose unless subverted by reactionaries or other 'forces of evil'. Thus the developing conservative narrative posits that Aboriginals must simply forget about culture and

identity, which are irrelevant in the modern globalised world, and become individual market-driven consumers and entrepreneurs, like all other sensible people. Aboriginal leaders, with the exception of Noel Pearson, are dismissed as self-seeking opportunists trying to divert Aboriginals from their natural and inevitable assimilation in order to create careers for themselves.¹ The historical revisionism of Keith Windschuttle fits well with this emerging narrative, undercutting to some degree the moral high ground occupied by Aboriginals in the old discourse. Not surprisingly, the proponents of this narrative welcomed the abolition of ATSIC as long overdue.²

In the end the emerging conservative narrative is little more than a return to assimilation, although it usually declares its allegiance to the more humane version espoused by Paul Hasluck. Essentially it regards Aboriginality as a deficiency, a burden that handicaps Aboriginals in the modern world and should be shed. But for most Aboriginals it is a central feature of their identity, a source of pride. Their problem is not how they get rid of it, but how they maintain it in the modern world, and reconcile it with the demands of that world. They may have to redefine it, but it remains precious and integral to their being. It seems to me that this was the problem Pat Dodson was grappling with in a recent appeal to young Aboriginals. While encouraging them to aspire to the many beneficial opportunities that membership of the broader Australian society has made available, he urged them to balance these things 'with our very serious responsibilities to sustain our unique indigenous society and carry its burdens. Unless our best and brightest are prepared to recognise this and add their skills and experience to the sustaining of our languages, law and culture, then the prophets of our inevitable demise may well be found to have been correct.'³ It seems to me that such choices remain to be made by Aboriginal people, and that they should not be pre-empted either by whatever new narrative we adopt, or by current policy.

National Party politicians have embraced the new narrative, feeling able to present themselves as the true champions of Aboriginal interests in advancing such traditional policies as the encouragement of home ownership.⁴ It has a natural appeal to John Howard, who has never concealed his dislike for symbolism, separatism, collectivism, 'rights talk', national apology and 'black armband' history, and his preferences for mainstreaming services and for a selective reading of Noel Pearson.

Even in his 2001 Menzies Lecture, which was a clear but little noticed attempt to reinvent himself as an enlightened leader sympathetic to Aboriginal aspirations,⁵ Howard commenced his analysis by defining the problem as that of extending 'Australia's social cohesion', 'the crowning achievement of the Australian experience during the last hundred years', to include Aboriginals, and finished with the assertion that the way forward to 'true reconciliation' is to build on an Australian unity that is the envy of the world - a unity 'in our values and...in the hopes we hold for the future'. It was a strange conclusion when, only a few minutes earlier, he had given lip service to the proposition that conflicts between Indigenous and non-Indigenous values were at the heart of difficulties in Aboriginal affairs, adopting (without acknowledging the source) something I had written in refutation of his Minister's statement to *Le Monde* that Aboriginal difficulties in Australia could be traced back to their failure to invent the wheel and similar deficiencies.⁶

When announcing that ATSIC would be abolished, Howard made it clear that he shared the view embodied in the new narrative that the political future of Aboriginals did not lie in separate institutions. 'We believe very strongly' he said, 'that the

experiment in separate representation, elected representation, for indigenous people has been a failure. We will not replace ATSIC with an alternative body.' Instead he would establish 'a group of distinguished indigenous people appointed to advise the Government on a purely advisory basis in relation to Aboriginal affairs', and would be willing to consult with bodies and people elected by Indigenous people to represent them 'in the course of consulting different sections of the community'.⁷

Conservative thinkers and Coalition politicians like to quote and claim the support of Noel Pearson, undoubtedly the most powerful, innovative and rigorous contributor to the debate. However, he presents difficulties for both the liberal Left and the conservatives. His emphasis on individual responsibility, his willingness to seek beneficial partnerships with private enterprise, and his virulent attacks on 'progressivists' for what he sees as a permissive or forgiving attitude to drugs, alcohol, violence, and idleness have confounded the Left and delighted the Right. The Right however is uncomfortable with his championing of specific Aboriginal rights, fundamentally the right to be different in significant ways,⁸ but including contentious matters like land rights and a considerable measure of community self-government. In a recent TV interview he succinctly summarised his policy prescription: 'The key to Indigenous uplift is welfare reform. It's Aboriginal people taking responsibility for their own affairs and it's about intolerance of substance abuse'.⁹

It is characteristic of Pearson's intellectual strength that his ideas tend to develop over time as he carefully thinks them through and tests them. This is particularly true of that part of his prescription that refers to 'Aboriginal people taking responsibility for themselves.' He started with emphasis on individual responsibility for oneself and one's family, his foundational appeal to the Cape York communities being entitled *Our Right to Take Responsibility*.¹⁰ His 'bottom up' approach to self-determination contrasts markedly with the 'top down' thinking that had produced ATSIC. He has long been a strong critic of ATSIC, arguing for 'an ATSIC that's centred on, designed around regional autonomy, rather than the central bureaucracy and central commission and central politicking in Canberra'.¹¹ However he reacted strongly, as did most Indigenous leaders, against the Government's proposal to replace it with a panel of advisers selected by the Government itself. His criticism of ATSIC crystallised into the proposition that 'the election procedure that was provided for in the 1989 legislation did not attract the best Indigenous people to stand for office', but rather than offering an alternative blueprint he said that 'there's a need for us to reflect on why it is that we have failed to recruit good Indigenous people'. A major concern for him was that the abolition of ATSIC presaged a return to mainstreaming of services, and he reiterated the view that 'where Government took complete responsibility for trying to uplift Indigenous people, Government was going to get nowhere'.¹²

The emerging conservative narrative is powerful, and accords with the approach of the National Government. However, although some of its themes resonate with the general social orientation of the new leader of the Labor Opposition, Mark Latham, the policy he has recently announced reflects more of the influence of Noel Pearson, which is not surprising in view of the mutual respect the two have shown in the past.¹³ Latham upstaged the Government by announcing the policy of abolishing ATSIC a fortnight before. However, he said that Labor would 'establish a new framework for Indigenous self-governance and program delivery with a focus on regional partnerships and a new directly elected national representative body'. Responsibility for program development and delivery would be transferred to directly elected regional

bodies, while a new directly elected national Indigenous body would have responsibility for providing independent policy research and advocacy, delivering policy advice to government and the private sector, and monitoring policy outcomes. He promised extensive consultation on the proposals, guided by principles that included the integration and coordination of Federal, State, Territory and community-based Indigenous programs, and a partnership arrangement with the States and Territories to better coordinate funding and services, an approach that would incorporate the community and private sectors in the development and delivery of Indigenous services.¹⁴

There is thus a clear divergence in national politics. The Coalition says there will be no separate system of elected Indigenous representation. The ALP says there will be directly elected representative bodies at both national and regional level, with a new regional emphasis. Both policies pre-empt Aboriginal choice, albeit in opposite directions. Each reflects the ideology of its white proponents. Is there no alternative?

As a starting point, everyone might at least agree on the urgency of a renaissance, whether on an individual or collective basis, in the Aboriginal communities that yield the appalling statistics and horror stories that attract the media. Neither mainstream bureaucracy nor the national ATSIC leadership has been able to achieve much in stimulating such a renaissance, but in various parts of Australia there are hopeful Indigenous initiatives. Instead of trying to replace ATSIC with another 'one-size-fits-all' institution, or simply throwing up our hands and embracing mainstreaming, we could try a more flexible and less ambitious approach, one that does not pre-empt decisions that in the end only Aboriginals can and should make, and that they will eventually make not in today's consultation with governments, however extensive, but by the way they act in the face of the ongoing pressures that confront them.

We could try looking at the institutions that are working, not with a view to universalising them, but to removing obstacles to the achievement of their potential. If something seems to be working well in a particular place, we could be ready to support it but resist the itch to conclude that we have discovered 'the solution', theorise what has happened, and impose it everywhere. We could leave it to other communities to decide what they are willing to undertake, whether it be to copy the particular model, or develop something of their own. Some of them of course may take a long time to do anything, and it may be hard to resist the temptation to think we can decide for them and impose a solution. Some communities may never develop separate organs of community governance, but instead fit into the mainstream community or even simply fade away as their members disperse in pursuit of individual opportunity. That would after all be their choice, their self-determination. They would be living by their narrative, not ours.

Experience shows that the hopeful developments in Aboriginal community life usually flow from Aboriginal initiatives at local or regional rather than national levels, and that they are exceedingly diverse in their institutional bases. Some have indeed developed within the ATSIC framework, like the initiatives in the Murdi Paaki region in western NSW, which is showing an eclectic ability to mobilise both organisations and the wider communities, to build on shared interests with white-controlled municipal and development bodies, and to seize opportunities offered, for example by the Council of Australian Governments (COAG) Indigenous initiative.

In other places developments have been outside ATSIC and have opportunistically built on institutions that were at hand, and/or created new ones. In the middle of the

Western Australian desert Aboriginals have taken over a local government shire and made constructive use of it. In some cases land councils have become the focus for a wide range of community aspirations. In Alice Springs there is the longstanding home-grown initiative of the Tangentyere Association. In South Australia the Aboriginal Legal Rights Movement, originally founded as a legal service, has widened its role. In Moree Aboriginals responded to the initiatives of a local cotton farmer. In Cape York the idea of partnerships has been used to build a network of relationships between communities, governments and private enterprise, with a strong discourse of personal and community responsibility. In the Northern Territory and some other areas land councils have become the instruments of a wide range of activities. Often the distinction between community governance and service delivery becomes blurred.

Notoriously hopeful Aboriginal initiatives come and go, and I have no wish to give the kiss of death to any of these developments by making extravagant claims for it. They all have their critics, black and white. But they do show a significant potential for Aboriginal initiatives at the local and regional level that are not dependent on a body such as ATSIC, yet take a leadership and organisational role over a range of community activities that justify regarding them as instruments of governance and self-determination.

Does the demise of ATSIC leave gaps that must be filled by a replacement organisation? One response to its abolition was to ask 'Where will the Government get its advice on Aboriginal matters?' My answer would be that it will get it where it got it before, which certainly wasn't from ATSIC. It will get it from advisers it appoints or consults, and they will give it advice it likes or be replaced by others who will. The way Aboriginals will influence policy will not be by formal structures of advice, but through shaping public and bureaucratic opinion, both of which will be affected much more by what Aboriginals do than by what they say. Governments are always free to listen to, consult or be influenced by whomever they like, and one of the ongoing functions of policy bureaucrats and ministerial minds is to cultivate appropriate sources of ideas. Community lobby groups gain influence by establishing their credibility rather than by acquiring formal status.

A great deal of anxiety has been generated by John Howard's statement, made in the course of announcing the abolition of ATSIC, that programs will be mainstreamed. At one extreme this might be taken to mean that Aboriginals will have to make do with the services delivered to other Australians, with these services ignoring the special needs and sensitivities of Aboriginal clients, including their embedding within communities. This would be an absurd way to proceed, and it seems clear that the Prime Minister meant something less than this, namely that services to Aboriginals would become the responsibility of relevant mainstream departments, which would take over the roles originally concentrated in departments of Aboriginal Affairs and then taken over by ATSIC, and more recently ATSIS. This is suggested by reading the complete sentence in his announcement: 'Programmes will be mainstreamed, but arrangements will be established to ensure that there is a major policy role for the Minister for Indigenous Affairs', and by the ensuing reference to developing mechanisms at a local level through consultation with communities and with local government and with state governments.¹⁵ The present Minister for Aboriginal Affairs, who has shown herself much more flexible and empathetic than her predecessor, appears to be taking seriously the promise to negotiate with Regional Councils about mechanisms to take their place.¹⁶

Mainstreaming in this sense has always existed in relation to education, and it took place in relation to health in 1995, when ATSIC's relevant functions were transferred to the Commonwealth Health Department. This has not meant the end of special programs for Aboriginals, or of roles for Aboriginal organisations, or of the employment of Aboriginals in special roles in the mainstream bureaucracy. There is no reason why it should do so when other areas are mainstreamed. ALP policy, already quoted, is even more explicit about flexibility and consultation in developing mechanisms for service delivery.

Clearly governments have a duty to ensure that Aboriginal communities get the best and most appropriate support in health, education, employment opportunity, housing, law and order, justice and other standard services. Whether services are managed through mainstream departments or bodies such as ATSIC or ATSI, there will always be room for improvement, and conflicts over policies, priorities and implementation. In either case services may be delivered in empowering or disempowering ways. There is a lot of room in which smart bureaucrats and smart Aboriginals can find creative solutions and ways to cooperate. Where ways can be found to use or stimulate Aboriginal initiative, or to take advantage of the ability of Aboriginals to do things that mainstream bureaucrats cannot do as well, these opportunities can and should be taken.

Self-determination is not something governments can bestow, by creating institutions or otherwise. It must grow upwards from Aboriginal people themselves. It is a question of what Aboriginals want to do and are prepared to do, evidenced more reliably by what they do than by what they say or assent to. Where Aboriginals pursue a path forward, governments can help by clearing the way, giving needed jurisdiction and reasonable help, as Premier Beattie has done in Cape York, in stark contrast to the former LCP government in the Northern Territory, which jealously sought to limit and frustrate the expanding roles of the Land Councils and Tangentyere. Beattie had the wit to realise that something important was brewing in Cape York, and instead of trying to take it over, he stood by to give help when needed. Aboriginals asked for partnerships with Government departments and he gave partnerships. They asked for the power to control liquor in their communities and he gave the power. They asked that public servants learn to provide services in an empowering rather than a disempowering way, and he told public servants to smarten their act.

If and when Aboriginals really want and are ready for a national body, they can be expected to develop one, and one that accords with the ideas of representation they hold at the time. To the extent that Aboriginals choose to follow their aspirations through community rather than individual action, regional Aboriginal institutions will grow, and may increasingly feel the need to coordinate their activities and find ways of forming, expressing, and lobbying for policies at national level. Regional organisations will sponsor ways to do this, and out of this a national organisation may evolve. Government funding and legislative backing may then be appropriate. Such a 'bottom up' evolution is more likely to work than an attempt by government to replace ATSIC with another invention.

Anxious reformers who fear this will be too slow should consider what other methods have achieved in thirty years. If the evolution does not take place, and, as the conservatives predict, Aboriginals left to themselves choose to act individually rather than collectively, perhaps maintaining their sense of identity but not separate organs of governance, that will be their choice, however disappointing to communitarian

liberals. Either way, it will be truer self-determination than the imposition of artificial structures, and will perhaps provide clues to a new narrative that takes account of what Aboriginals are prepared to do to resolve the painful conflicts they will inescapably continue to face in the years ahead.



Hal Wootten AC QC, has been involved in Aboriginal affairs for many years. This involvement has ranged from being founding President of the first Aboriginal Legal Service in 1970 to being one of the Royal Commissioners into Aboriginal Deaths in Custody from 1988 to 1990 and a Deputy President of the National Native Title Tribunal from 1994 to 1997.

- ¹ Johns, G (2001). 'Introduction'. *Waking Up to Dreamtime: The Illusion of Aboriginal Self-Determination*. G Johns (ed). Singapore, Media Masters: 20-45; Howson, P (1999). 'Rescued from the Rabbit Burrow.' *Quadrant* XLIII, 6: 10-14; Sandall, R (2000). *The Culture Cult: Designer Tribalism and other Essays*. Westview Press.
- ² Howson, P (2004). 'Pointing the Bone' *Quadrant* XLVIII, 6: 7-13.
- ³ Dodson, P (2004) 'Facing the lure of white society', *The Age* 5 July.
- ⁴ The NSW National Party leader, Andrew Stoner, made Aboriginal policy the main subject of his address to his party's annual conference in 2004 (*Sydney Morning Herald*, 26 June 2004: 10). The federal leader of the National Party is also vocal on Aboriginal issues (John Anderson 'Time now to break the sorry cycle of neglect' *Newcastle Herald*, 1 July 2004: 9)
- ⁵ Howard could not quite bring himself to commence his speech with the conventional acknowledgement of the traditional 'owners' of the land on which he stood, but he did acknowledge that he spoke 'on the traditional lands of the Eora people', and went on to declare reconciliation 'an unstoppable force', refer to the removal of children from their families as 'part of the very difficult and traumatic experience of the indigenous people of this community', and repeat 'a commitment to recognise the special status Aboriginals and Torres Strait Islanders are entitled to feel as Australia's first peoples'. Howard, J (2000). 'Perspectives on Aboriginal and Torres Strait Islander Issues' *Menzies Lecture Series*.
- ⁶ Wootten, H (2001). 'A poor measure of the black-white gulf' *Weekend Australian Letters* 7 October.
- ⁷ Howard, J (2004). *Transcript of the Prime Minister the Hon John Howard MP Joint Press Conference with Senator Amanda Vanstone*, Parliament House, Canberra 15 April.
- ⁸ He argued eloquently for respect for difference in his 1993 Boyer Lecture: Pearson, N (1994) 'Mabo: Towards respecting equality and difference', in *Voices from the Land*, ABC Books, Sydney.
- ⁹ Australian Broadcasting Corporation (2004). 'Pearson condemns Howard's Indigenous plan' TV Program Transcript 15 April. <http://www.abc.net.au/7.30/content/2004/s1088261.htm>.
- ¹⁰ Pearson, N (2000). *Our Right to Take Responsibility*, Noel Pearson and Associates, Cairns.
- ¹¹ Jopson, D (2002) 'Pearson calls for reform of ATSIC' *Sydney Morning Herald*, 11 November.
- ¹² *Loc cit*, endnote 9.

- ¹³ They were associated in the 'social entrepreneurs' movement (Pearson, N (2002) *Fifth Annual Hawke Lecture*. <http://www.hawkecentre.unisa.edu.au/speeches/lecture5.htm>). Pearson has gone out of his way to distinguish Latham from the 'progressivist' Left he criticises (eg, Pearson, N (2000) 'Beyond dependency' *Options 12 (December)*, the Newsletter of the Federal Member for Sturt, Chris Pyne; Kelly, P (2002) 'The road less fellow travelled'. *The Australian* 7 August).
- ¹⁴ Australian Labor Party National ALP (2004) 'Mark Latham and Kerry O'Brien - Opportunity and Responsibility for Indigenous Australians'. ALP Policy Page http://alp.org.au/media/0304/20007_157.html
- ¹⁵ See reference in endnote 7.
- ¹⁶ ATSIC (2004) 'Building a framework for future directions in Indigenous affairs: Joint Statement by ATSIC Regional Council Chairpersons'. *ATSIC Media Releases*, 14 May 2004.



ATSIC and Indigenous Representation in Australia: Is There a Future?¹

Kingsley Palmer

The creation of the Aboriginal and Torres Strait Island Commission (ATSIC) by the Hawke Labor government in 1989 represented a bold initiative that set apart the governance and administration of Indigenous Australia from mainstream processes. Important in the new agenda was a fundamental appreciation of a need to provide Indigenous Australians with an opportunity to determine how and where money and resources were to be allocated in programs affecting Aboriginal and Torres Strait Islander peoples. For the first time there was a national recognition that Indigenous Australians had the right to a substantial say in how they would manage and take ownership of policies and practices that affected their daily lives.

Until comparatively recently, neither of the two major political parties stated any intention to change fundamentally the structure of ATSIC. Then in April 2003 Federal Minister Ruddock announced that he was proposing a radical separation of powers between the elected and administrative arm of ATSIC.² Subsequently, the Federal Government introduced the *Aboriginal and Torres Strait Islander Commission Amendment Bill* (2004) which effectively would abolish the Commission and mainstream all Indigenous programs. As recently as June 2004 the Shadow Minister for Indigenous Affairs, Kerry O'Brien, announced that the Labor Party had agreed to the establishment of a Senate Select Committee on the Administration of Indigenous Affairs.³

At the time of writing, then, the two major political parties are committed to the abolition of ATSIC both as a national representative commission and as a consolidated organisation that is responsible for program delivery. The ideology that underpinned the creation ATSIC, reflecting a move toward the recognition of,

potentially, a greater autonomy for Indigenous Australians, appears lost. Program funding is already assigned to other Federal government departments (so called 'main streaming'), while plans for a replacement national representative body are yet to be formulated and are now subject to a Senate inquiry. The future for Indigenous representation and self-determination in Australia is now uncertain.

At a time when it would appear that ATSIC has no future it may be helpful to consider something of the history of the past fourteen years to examine how the development of public policy in this significant area of Indigenous self-determination might inform future choices. This history is not merely one of recorded events, but rather of a long and sometimes tortured analysis (often a self-analysis) of the progress of the experiment in self-determination. Perhaps no other venture in the history of public policy in Australia has been subject to such detailed and exacting scrutiny. This speaks to the sensitivity of the political context, where Indigenous governance issues remain topics for criticism from many quarters, Indigenous and non-Indigenous, and where outcomes for recipients remain for the most part, unsatisfactory.

There is no shortage of written material on ATSIC. In addition to a 2002-2003 review of ATSIC, commissioned by the federal government, there have been three other major reviews,⁴ a review of the staffing and structure of the Commission once established⁵ and numerous other investigations of ATSIC's programs.⁶ There is also a substantial body of research material, developed from secondary sources, that relates to the origins of ATSIC, its forebears and the intellectual and political history that surrounds its foundation.

There are also many public statements made by both ATSIC (often through the Chairperson) and by federal politicians that relate to the aims, purpose and future of the Commission. Policy statements by federal politicians provide indications of how the two major political parties saw the future of the organisation. On the other hand, the amount of fundamental (that is original) research that has been undertaken into ATSIC is surprising for its paucity. Whether this is a result of lack of academic interest or because of barriers to access is unknown. However, for a body that has been subjected to so much introspection and public scrutiny, more fundamental research would have been useful in setting straight the record.

There has also been a steady decline of research interest in ATSIC over recent years. This is in contrast to a significant period of commentary and writing in the first years of the organisation's operations. This decline is most probably a result of the fact that many now consider that almost everything of importance has been said about ATSIC and that there is little point in going over old ground. It is also true that ATSIC was for many years seen as an organisation that was rapidly evolving in the context of a very different public and political environment than is currently observable. This means that comment about ATSIC can appear very out of date, even after a comparatively short period of time.

Origins and forebears

The history of ATSIC is important because it helps to explain the origins of many of the current preoccupations and difficulties identified by commentators who critique the Commission. The history is also important because it is illustrative of the path taken by successive federal governments in the administration of Indigenous affairs in Australia and is reflective of their relationship to Indigenous minorities and their attitude to their political aspirations. This history is a long one, stretching back as far

as 1788, so in the context of ATSIC it is possible to view only a recent portion of it. It is also a history that needs to be understood in the context of post-colonial administrations. Indeed, much that has been written about ATSIC's origins and creation is settled upon acceptance of these understandings.

The creation of the National Aboriginal Consultative Committee (NACC) in 1973 was a courageous political initiative to give a voice to Australia's Indigenous minorities. After a review by Hiatt (1976) it was replaced by the National Aboriginal Conference (NAC) in 1977; this in turn was reviewed by Coombs (1986) and abolished by Minister Holding in 1986.⁷ While there were other Indigenous consultative mechanisms⁸ the era was notable for the attempt by the Commonwealth to provide a national representative voice to Aboriginal and Torres Strait Islander peoples, which was a key component in an attempt to implement policies of self-determination and self-management. While the exact meaning of these policies was variable, and indeed the terms employed seemingly a matter of choice on the part of politicians⁹, the enunciation of the principle that Indigenous peoples should have greater control over their affairs was apparent.

Upon its creation, ATSIC was strongly supported by some Indigenous leaders as being the vehicle for the realisation of self-determination, but there was no universal agreement on this point. The matter at issue was the extent of Indigenous control and whether the control was within the machinery of government, or outside of it. Much of the subsequent debate about ATSIC's role developed from the confused thinking that accompanied the early experiments in government surrendering at least some authority to Indigenous control.

Had the roles and responsibilities of both the NACC and the NAC been better spelled out, many of the subsequent difficulties might not have eventuated.¹⁰ This confusion of roles and powers spilt over into the new body, ATSIC, which was announced by the new Hawke government in 1987 and enacted into legislation in 1989, becoming operational in 1990.

In seeking a replacement for the NAC the government had commissioned reports from both Coombs (1986) and O'Donoghue (1985, 1986). The reports did not fully sketch a commission of the sort that was to see the light of day under the ATSIC legislation. Both were supportive of a national representative organisation. O'Donoghue saw such an organisation as primarily advisory with regional assemblies and a national body. Representatives were to be drawn from communities rather than elected as in a Westminster system.¹¹ Coombs wanted a national body, 'designed to give Aborigines an effective influence on Government policies',¹² seeing it as a 'Congress' elected along community lines. He also stated that it should be quite separate from the federal Department of Aboriginal Affairs (DAA).

What eventuated was outlined by the then Minister for Aboriginal Affairs, Gerry Hand, in his Ministerial statement *Foundations for the Future*. The extensive consultations, legislative drafting and the turbulent passage of the bill through the Parliament are well known.¹³ But the most significant feature of the new organisation was that it was a radical departure from the bodies that had preceded it; while representative functions remained central, ATSIC also combined the functions of the DAA and the Aboriginal Development Commission (ADC). It thus had a dual role, being responsible for both the administration of programs and the representation of interests. These two functions in particular (along with others spelled out in the ATSIC Act) were to provide the focus of much commentary and debate in the years that followed. Principal

amongst the issues raised was the ability of the organisation to separate its dual responsibilities, a predicament that has been called 'separation of powers', but which is probably better termed 'separation of responsibilities'. The new organisation also inherited many bureaucrats from the old DAA who were regarded by Coombs (and many others) as an impediment to the achievement of Indigenous autonomy. Moreover, these employees were to be Public Servants, answerable, ultimately, to the government of the day rather than the elected Commissioners. These matters were to inform debate about the effectiveness in practice of ATSIC in administering programs according to the wishes of Indigenous representatives.

This was compounded, in some commentators' views, by the manner in which Commissioners and Councillors were to be elected. Community representation had been abandoned for practical reasons, and a formal electoral system was imposed, substantially different from the 'grass roots' approach suggested by Coombs that some saw as being more culturally appropriate. This too raised issues about the effectiveness of the new body as a truly self-determining organisation that represented Indigenous points of view.

Finally, the new body, combining as it did executive and representative powers, suffered heavily at the hand of the Coalition Opposition during the passage of the Bill, since it was seen by some as setting up an alternative government, beyond the control of the Parliament.¹⁴ The price that was paid for this greater perceived autonomy was increased accountability along with other practical measures that ensured that ATSIC remained answerable to the Parliament.¹⁵ This was what Hawke called, 'finding the right balance between the principles of self-management and of overall ministerial responsibility'. It was a 'renegotiated policy bargain' whereby self-management would be 'widened and deepened' at the price of stringent accountability and greater ministerial oversight.¹⁶ Subsequently, this stringent system of accountability was to be oft cited as a serious (and unnecessary) impediment to ATSIC's operations, one which inhibited progress in the achievement of better outcomes for Indigenous Australians. However, had there not been a policy bargain, ATSIC might never have come into being.

Principal among the structural issues was the unique combining of representative and executive powers. It would have been possible to separate these, as was the case prior to ATSIC's inception, to have a representative body (like the NACC), while requiring administration of programs to be done by a department of State. How this would sit with the ideal of self-determination is hard to imagine, unless perhaps the department was to be controlled by Indigenous employees. However, ATSIC was always dependent upon the government for funding, so that this power was severely limited. Despite the tensions between the two parts of the Commission, and that ATSIC was a 'contested structure', no research considered here suggested a reversal of the amalgamation of representation and executive arms that was basic to the structure of ATSIC as it operated.

Another structural issue was the nature of the election processes. There was much debate over the system employed, and it represented a radical departure from that suggested by both O'Donoghue and Coombs. However, the reasons for not following a community based representational system was that it was impractical – most areas boasting a great many community organisations – so deciding which should send representatives would have been complex, vexatious and probably inequitable.

Moreover, there was a real chance that larger organisations might have exercised undue political influence over the process and thus subverted the rationale for adopting the system in the first place.

However, the representational power of the regional Councillors and their role generally, in both providing policy advice and making decisions over the allocation of funds, has been a recurrent theme. Coombs saw the power of the regional representatives as extremely important to the success of the venture and cautioned against an overly centralised organisation.

The final fundamental structural issue related to the application of self-determination/management. Critics of ATSIC said that it either delivered too much or too little in this regard. For the former, the solution presumably would have been to remove all executive control from the Commission and revert to providing programs through mainstream departments. As a trend, this was already observable some years before the eventual demise of the Commission and was noted with concern by some who suggest that solutions would appear to lie in the bolstering of ATSIC's powers, loosening the shackles of accountability and the eventual establishment of an autonomous body (or bodies) with consequential jurisdictional powers. Recent development shows all too clearly that there was never the political will to accomplish this given the climate in federal government circles.

The issues examined thus far were systemic to the structure of ATSIC because they were imbedded within the architecture of the organisation as it was created. This was the product of extensive political compromise as well as a mixing of what was desired by some Indigenous leaders (real self-determination) and what was deliverable. The issues that developed from these compromises and negotiated policy measures turn up time and time again in the literature on the Commission. While there remain alternatives, it would appear, realistically, that their systemic nature counsels that they would endure for the life of the Commission. Measures there may have been to ameliorate their impact, but they stemmed from a basic and insoluble problem. In a postcolonial regime, men and women of goodwill wish to accommodate displaced Indigenous minorities, but have the political will to do so only in so far as the systems designed to accomplish this can be comprehended within currently accepted practice. It is hardly surprising then that ATSIC was a 'contested structure' and has fallen foul of the expediency of political compromise on both sides of the Parliament.

Public and political statements

Despite the Coalition's opposition to ATSIC during the turbulent exchanges of 1989 and 1990, the Commission's future under a Liberal-National Party appeared secure, if not immune to reform. Statements made by various Ministers and the major parties indicate that successive governments did not see ATSIC as a target for abolition. Rather, there was a desire to reform operational aspects of the new organisation. To this end, the Coalition's statement, released in 1992, foreshadowed many of the reforms that were to flow from the 1993 review; reduction in the number of Regional Councils, devolution of powers to the Regional Councils, as well as a reduction in the number of commissioners and the reallocation of programs to ATSIC, currently outside the portfolio.¹⁷

The Australian Labor Party's policy statement for the 2001 elections promised to provide for greater regional authority, and that Labor would work with ATSIC to accord with their priorities to concentrate on advocacy. However, it would continue to ensure accountability. Gone from the 2001 Labor policy was the recognition that ATSIC had

an important function beyond service delivery and advocacy.¹⁸ This would appear to suggest that scope for greater autonomy was now limited, and that political rhetoric from both sides of the Parliament had moved away from terms like 'self-determination' and 'self-management', to talk more loosely about 'empowerment' and 'outcomes for Indigenous Australians' and, by March 2004, of restoring 'opportunity and responsibility' to Indigenous Australians.¹⁹ It remains a fact, however, that the essentials for Indigenous self-determination have been put in place, with the establishment of Indigenous representative organisations, including Land Councils and (formerly) ATSIC and, potentially, a national Indigenous representative body that will be its successor. These yield public policy recognition. While the move toward autonomy is now more constrained than it may have appeared a decade ago, there is an emergence of 'an indigenous order of Australian government'.²⁰ A strengthened ATSIC was well placed to take a lead in this activity, but this would appear to be an opportunity which is now lost.

The early years of ATSIC saw much criticism of the new body.²¹ These complaints were balanced by others who welcomed the new organisation with cautious optimism.²² The critics of the new structure did not suggest alternatives, although Langton argued that there was a need for self-government, independent of the States, by accessing untied Commonwealth grants to the States and Territories, which were not, so Langton asserted, properly directed to Indigenous purposes.²³

The then Chair of ATSIC, Lowitja O'Donoghue, was energetic in her promotion of the organisation, setting out the basis of the new Commission, while stressing that ATSIC, 'is, of course, the leading example of the Commonwealth's endorsement of the principles of self-determination and self-management'.²⁴ By 1997, she was more subdued and, following the heavy cuts made to ATSIC by the Howard government, spelled out the difficulties that ATSIC faced. She noted that the Coalition government was 'confronting' not 'adopting' ATSIC.²⁵ In a similar vein, an ATSIC publication of 1998 attempted to rectify a common perception that ATSIC was responsible for everything to do with Indigenous affairs.

The brief review of political materials is instructive in showing how entrenched the idea of a Commission had become in mainstream political thinking. While it was constrained by expediency, ATSIC provided a solid foundation upon which could have been built a legitimate Indigenous order of Australian government. ATSIC, while only one component in this order, was probably the most significant player. On the stage of national as well as international affairs, ATSIC had an important role to play in a process of providing greater power to Indigenous peoples, which was not inconsistent with the political aspirations of either major political party. In terms of ATSIC's structure, this role could only be played to the full had the organisation continued to exercise power and to have sufficient resources to operate successfully. Substitution of a new national consultative body, as is perhaps currently proposed, has no future in achieving these outcomes, unless there is a clear nexus between policy advice and the mainstream service delivery which is currently being put in place.

It is evident that ATSIC laboured under much criticism and, despite the many positive statements made by its senior representatives, was forced into a defensive position and had to allocate time and resources to do so. This raised issues about ATSIC's position within the administration of public policy and also of its relationship to government. ATSIC's position as a legislated arm of government was never in

dispute, but its structural relationship to government, and government's responsibilities to it were in question.

ATSIC was subject to substantial (some might say excessive) review, which provides a corpus of work that should be seen as a point of departure for any further research. The issues raised by earlier reviewers represent recurrent themes in the literature on ATSIC. That many of these issues acquired the characteristics of old chestnuts either means that there was not the will to solve them, or, more probably, that they were systemic to the organisation as it had been created. The problems derive from ATSIC's dual nature. It was, for the one part, charged with the administration of public policy within a Western-style democratic system of governance. It was, for the other part, required to be the representative body for Australia's Indigenous minorities and a primary vehicle for the achievement of their self-determination. While solutions could have been found to ease the friction between the operation of this duality, what was perhaps required was a greater acceptance of the structural and ideational reality that was ATSIC.

Options for the future

From a detailed examination of what has been written about ATSIC over the last ten years or so, there emerge four interrelated principles. These principles represent values, ideals and goals. They are the stuff from which policy is derived as a means of effecting their realisation. Options for a replacement of the Commission, however they are devised, will to a greater or lesser extent, either confirm or deny one or more of these principles. Their consideration, comprehension and admission to the process are therefore critical.

The first principle relates to the achieving of some degree of self-determination for Australia's Indigenous minorities. ATSIC was founded upon the aspiration that this ideal would be achieved. The two-tiered representative structure, the control over the allocation of funding, policy-making and the idea that the Board should be a national advisory and representative body, all stem from the concept of self-determination. Were this not so, ATSIC would not have been born. It is an ideal that lay at the heart of its inception and at the root of its birth. In terms of options for a restructured Commission, then, this principle has to be re-evaluated. There needs to be a view as to whether it is still wanted, still holds good, has worth and is achievable. That decision will affect most other ideas that might follow relating to the structure, function and activities of any body designed to replace an abolished Commission.

The second principle is situational. Should a replacement of the Commission be an organisation within or without government? Part of ATSIC's difficulties stemmed from unrealistic expectations about what it could deliver. These are reflected in criticisms that it was not *really* a vehicle for self-determination. This was because ATSIC always was an instrumentality of the state, even though it was provided with capabilities that far exceeded those of government departments. As a consequence, ATSIC tended to please no one – those who sought greater autonomy saw it as too limited, those who opposed special treatment for Indigenous Australians saw it as too radical. Coupled with this polarisation of views was a reality that saw accountability and ATSIC as inseparable but uncomfortable bed-fellows. The principle is profound because it again goes to the heart of any consideration of options for the future of a national representative body. If it is agreed that a replacement of the Commission must remain within the government's curtilage (affirmation of the *status quo*) then certain outcomes cannot be expected from the organisation. There is a limit to what it can deliver. And

these must be admitted to any proposed outcomes that might be expected from options considered. On the other hand, Hawke's view, that it was a matter of getting the balance right is apposite. The nature, extent and definition of that balance are critical.

The third principle relates to devolution. This is a recurrent theme in the literature and substantial changes were made to enhance the capabilities and powers of Regional Councils. Regional Councils are considered to be closer to the constituents, more responsive and accountable to local pressures and therefore best able to make decisions on their behalf. There are, of course, also dangers in this proximity. Moreover, there was a clear tension between the further development of regional powers and the maintenance of a robust central authority. With the abolition of the Board, this tension is now resolved. Some saw the end of devolution as the ultimate demise of the Commission. The development of regional authorities is clearly an option for the future that might provide an avenue for increased regional autonomy, however difficult the application.

The fourth and final principle relates to the nature of the representative body. Both Coombs and O'Donoghue saw the replacement for the NAC as a national representative body that would give a voice to Indigenous peoples, inform government thinking and provide advice to it. Some have noted ATSIC's contributions and leadership in relation to national issues that demonstrate successes in this regard; reconciliation, native title, deaths in custody.²⁶ However, this success may well have been a function of the attitude of the government of the day, since it was neither mandated nor facilitated by required process and conspicuous in its absence at the time ATSIC was effectively abolished. If, as seems inevitable, there is an increase in the devolution of powers, the role that the Board played needs to be re-examined. Surprisingly, there is little written about what would appear to be a critical and central issue. If a replacement of the Commission is to be seen, as was the original intention for ATSIC, as a corner-stone of national Indigenous representation and the source of advice to government, then a more robust system than that which has been in place needs to be designed to effect the desired outcome.

This also requires a better definitional understanding of the relationship between a national representative body and the Minister. Such an understanding might be developed by considering means whereby the Minister becomes a stakeholder in the decisions of the national representative body, and so a willing partner in a relationship with his (or her) nationally elected representative body. Realisation of such a relationship is pivotal to the success of the whole venture that is bound up in an ideology that seeks to continue to provide Indigenous Australians with an effective voice in those matters that affect them most deeply.

[In 2002 the Federal government initiated a review of the Aboriginal and Torres Strait Islander Commission. The Council of the Australian Institute of Aboriginal and Torres Strait Islander Studies commissioned the author to develop a discussion paper for the ATSIC Review, which was subsequently published in an edited form as AIATSIS Research Discussion Paper 12, 23, available at the website http://www.aiatsis.gov.au/rsrch/rsrch_dp/discussion_papers.htm. This paper is a strongly condensed and updated version of that discussion paper, produced with permission of the AIATSIS.]

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- ¹ This paper is a revised, updated and edited version of a Discussion Paper, *ATSIC: Origins and Issues for the Future. A Critical Review of Public Domain Research and Other Materials* (Australian Institute of Aboriginal and Torres Strait Islander Studies Research Discussion paper 12, 2004) and is published with the permission of the AIATSIS. The author gratefully acknowledges the Institute's commissioning of the research that resulted in the analyses reported here and thanks the Institute for granting permission for portions of the original Discussion Paper to be used in the preparation of this present article.
- ² Media releases, Hon Philip Ruddock, 10 April 2003 and 17 April 2003.
- ³ Media release, Hon Kerry O'Brien, 15 June 2004. According to the press release the move would ensure that, 'the consequences of the government's move to abolish the Aboriginal and Torres Strait Islander Commission (ATSIC) and transfer all indigenous programs to mainstream bureaucracies receive appropriate examination. Due to Labor's action, Indigenous and non-indigenous Australians will get the opportunity to have their say on the government's plan.' As of June 2004 the ALP website contained no policy statement on either ATSIC or Indigenous affairs in general. However, In March 2004 Labor released a framework statement on Indigenous affairs that also proposed the abolition of ATSIC and, 'the creation of new administrative arrangements to restore opportunity and responsibility to Indigenous Australians' (*ibid*).
- ⁴ ATSIC (1993). Review of the operation of the ATSIC Act 1989. Report to the Minister for ATSI Affairs. Aboriginal and Torres Strait Islander Commission, Canberra; Daffen, P (1994). Salary Resources Distribution Review: Toward the year 2000. Cooldari Pty Ltd, Dolans Bay, NSW; ATSIC (1998). *Review of the Operation of the ATSIC Act 1989*. Aboriginal and Torres Strait Islander Commission, Canberra.
- ⁵ Mclver, R (1988). *Aboriginal and Torres Strait Islander Commission: Proposed organisational structure*. Mclver Associates, Sydney.
- ⁶ For example Spicer, I (1997). *Independent Review of the Community Development Employment Projects (CDEP) Scheme*. Aboriginal and Torres Strait Islander Commission, Canberra; Altman, J, D Gillespie and K Palmer (1998). National Review of Resource Agencies Servicing Indigenous Communities 1998. ATSIC, Canberra.
- ⁷ Coombs, HC and Robinson, CJ (1996). Remembering the roots. In *Shooting the Banker. Essays on ATSIC and Self-determination*, P Sullivan (ed). North Australia Research Unit, The Australian National University, Darwin: 1-16, provide a detailed account. Dillon, M (1996). Institutional structures in Indigenous affairs. In Sullivan *ibid* : 89-104 also provides a useful historical overview. Cf Hiatt, LR (1990). ATSIC: a new Aboriginal national organisation. *Oceania* 60, 3: 235-7; O'Donoghue, L (1986). *An Aboriginal and Islander Consultative Organisation*. AGPS, Canberra; Rowse, T (1990). The revolution in Aboriginal affairs. *Australian Society* 9, 3: 14-18; Rowse, T (1991). ATSIC's heritage. The problems of leadership and unity in Aboriginal political culture. *Current Affairs Bulletin* 67, 8: 4-12; Sanders, W (1993). *Reconciling Public Accountability and Aboriginal Self-determination/Self management: Is ATSIC succeeding?* Centre for Aboriginal Economic Policy Research, The Australian National University, Canberra (Discussion paper 51); and Sanders, W (2002). *Towards an Indigenous Order of Australian Government: Rethinking self-determination as Indigenous affairs policy*. CAEPR, ANU, Canberra (Discussion paper 230).
- ⁸ For an overview see Coombs and Robinson (1996) *op cit* : 2-7.
- ⁹ Sanders (2002) *op cit*: 1-4 provides a useful review of these terms and their use.
- ¹⁰ Coombs and Robinson (1996) *op cit*: 8.
- ¹¹ O'Donoghue (1986) *op cit*: 27-8.
- ¹² Coombs, HC (1986). Towards a National Aboriginal Congress. Extracts from a report to the

- Hon. Clyde Holding, Minister for Aboriginal Affairs, April 1984. Centre for Resource and Environmental Studies, The Australian National University, Canberra (CRES Paper 2): 13.
- ¹³ Dillon (1996) *op cit*: 91-2; Rowse, T (2000). *Obligated to be Difficult. Nugget Coombs' legacy in indigenous affairs*. Cambridge University Press, Melbourne: 200-1.
- ¹⁴ Dillon (1996) *op cit*: 94.
- ¹⁵ Rowse, T (2002). *Indigenous Futures: Choice and development for Aboriginal and Islander Australia*. University of New South Wales Press, Sydney :184-5.
- ¹⁶ Sanders (1993) *op cit* : 3, 8.
- ¹⁷ Wooldridge, M (1992). ATSIC, the way forward. Discussion paper of proposals for the next coalition government. Photocopy Ms. AIATSIS library, Canberra.
- ¹⁸ The media statement of 15th June 2004 released by the Opposition Shadow Minister for Indigenous Affairs, Hon. Kerry O'Brien, states that the establishment of the Select Committee will provide an opportunity for 'Indigenous and non-Indigenous Australians' to have their say on the new arrangements to be put in place to replace ATSIC, thus further diluting the emphasis placed on Indigenous consultation and locating these interests together with other Australians.
- ¹⁹ *Ibid*.
- ²⁰ Sanders (2002) *op cit*: 9ff.
- ²¹ Here follow just a few examples, which are perhaps typical. Some writers criticised the extent to which 'true' self-determination would be achieved (Bond, J and G Martin (1990). No Power in ATSIC. *Australian Society* 9, 6:47). Langton, M (1994). Self-determination. Overhauling the administrative practices of colonisation. In *Surviving Columbus*, P Jull, M Mulrennan, M Sullivan, G Crough and D Lea (eds). North Australia Research Unit, The Australian National University, Darwin: 132-41, like Coombs, HC (1990). Aborigines have to weigh ATSIC carefully. In *Issues in Dispute: Aborigines working for autonomy*. North Australia Research Unit, ANU, Darwin: 44, was critical of the bureaucrats inherited by the new Commission and considered that it was a means whereby the federal government could rid itself of the 'trouble' of dealing with Indigenous peoples. Langton also was critical of the twin structure of ATSIC (executive and representational) that she likened to two pyramids, the former inverted, which lacked contact with each other. O'Shane, P (1993). Aboriginal Affairs policies in the 1990s. Address to Evatt Foundation, Sydney, 25 August 1993, was more generally critical of the new Commission, complaining that it was impossible to learn from the 'glossy' brochures produced by the new organisation where the money would go.
- ²² Rowse, in reply to Bond and Martin, and in the same article (Bond and Martin (1990) *op cit*), stated that he considered the issues to be a matter of political perspective and that he preferred to be optimistic at that time. Articles by FAIRA (1990). ATSIC, a limited step forward. *Aboriginal Law Bulletin* 2, 43: 7-9 and Brennan, F (1990). ATSIC. Seeking a national mouthpiece for local voices. *Aboriginal Law Bulletin* 2, 43: 4-6, were also cautiously optimistic, while Coombs (1990) *op cit*: 46) urged Indigenous peoples to see ATSIC as '... a first step on the road to an Aboriginal structure of local and regional government within the Commonwealth on bases similar to, but independent of, Commonwealth territories'.
- ²³ Langton (1994) *op cit*: 139.
- ²⁴ O'Donoghue, L (1994). Keynote Address: Australian Government and self-determination. In *Aboriginal Self-determination in Australia*. C Fletcher (ed), Aboriginal Studies Press, Canberra: 3-12, also stated that '... clearly, the establishment of ATSIC in early 1990 and the subsequent development of its regional council structure have represented a radical advance in the application of self-determination principles within Commonwealth government arrangements'.(10)
- ²⁵ O'Donoghue, L (1997). Past wrongs, future rights. Text of speech to National Press Club, 29 January.
- ²⁶ Dillon (1996) *op cit* : 99; Rowse (2000) *op cit*: 206-7; Sanders (2002) *op cit*: 7.

Practical Reconciliation and the New Mainstreaming: Will it make a difference to Indigenous Australians?

Jon Altman

As Australia heads towards a federal election. Indigenous affairs policy is perhaps the most fraught it has ever been since the policy of self-determination was introduced by the Whitlam government in 1972.

In 1996, a conservative government led by John Howard came to office without a clear Indigenous affairs policy. Perhaps the defining moment of the period 1996–2004 occurred in October 1998 when, on winning office for a second time, the Prime Minister remarked that he wanted to commit himself very genuinely to realising the cause of reconciliation with the Aboriginal people of Australia by the centenary of Federation, 1 January 2001. He noted that there could be differences on how this might be achieved, but subsequently labelled his particular notion of reconciliation as 'practical'. His government, he asserted, was going to focus on 'closing the gaps' between Indigenous and other Australians in the key areas of health, housing, education and employment. In short, the focus would be on achieving socio-economic equality.

By applying a historical perspective to Indigenous affairs since 1971, and then by examining, in more detail, changes since 1996, I will consider Indigenous policy over the last eight years through the lens of socio-economic change.¹

The period 1971–1996 saw broadly progressive policy generate some positive outcomes in 'closing the gaps' between Indigenous and other Australians, at least according to official social indicators. But as 2001 Census and 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) data have become available, it is clear that during a recent period of rapid national economic growth the relative situation of Indigenous Australians has not improved - there is no evidence to date that the current 'practical reconciliation' approach is delivering better outcomes. While there have been positive shifts in absolutes according to standard social indicators, there are indications that in *relative* terms the plight of Indigenous Australians may have worsened in some key areas just as 'practical reconciliation' has become the dominant term in the Australian government's Indigenous policy.

Frustrated at this intractability, and in concert with a long-term opposition to the Aboriginal and Torres Strait Islander Commission (ATSIC), the government has revamped Indigenous affairs administration from 1 July 2004. This revamping has been termed the 'new mainstreaming',² but it is not mainstreaming as commonly understood. Rather, it is a re-allocation of Indigenous-specific Commonwealth programs to mainstream government departments, departments that already administer Indigenous-specific programs. This administrative shift, and the Prime Minister's view (15 April 2004) that the self-representation experiment has failed, could be the main policy legacy of the last eight years. Unfortunately, this administrative change is based more on rhetoric than on any objective assessment of ATSIC's program administration, as I will demonstrate. If it is to be a first move to true mainstreaming (that is the abolition of all Indigenous-specific programs), this policy shift is destined to fail.

In 1990, when ATSIC was first established, I wondered whether it was swimming against a mainstreaming tide.³ Now some 14 years later, I am of the view that if serious about abolishing Indigenous-specific programs and introducing

mainstreaming, then the current government is doing the swimming - against an Indigenous-specific programs tide dictated by a mix of existing Indigenous rights and an inability to guarantee immediate access for all Indigenous Australians to mainstream programs.

From a social sciences perspective, I lament the lost opportunities of the last eight years. First, there is the loss of a historically high level of political bipartisanship in addressing Indigenous disadvantage, an issue of national significance. Second, if the process of closing the gaps is to continue, then substantive mainstreaming, the equitable meeting of Indigenous citizenship entitlements by all levels of government is to be encouraged. But there is little evidence that any headway has been made in meeting this objective, despite the recent opportunity provided by the findings of the important Indigenous Funding Inquiry. Furthermore, current shortfalls due to historical legacy, Indigenous rights and aspirations, and international experience, all suggest that mainstreaming must happen alongside Indigenous-specific programs if Indigenous policy is to be more than a reversion to assimilation. Indigenous affairs is an extraordinarily complex policy domain. It is unlikely that any uni-dimensional or doctrinaire policy approach that ignores the diversity of Indigenous circumstances in Australia and that lacks Indigenous political inputs will succeed.

Indigenous affairs background

The modern policy era in Indigenous affairs had as its immediate precursor the constitutional amendment referendum of 1967 that was supported by all major parties and over 90 per cent of Australians. The referendum opened the way for Indigenous people to be included in the five-yearly census (effectively from 1971) and for the Commonwealth to take a more active role in Indigenous affairs nation-wide. Initially, Coalition governments responded by making special purpose payments to the States to fund Indigenous assistance programs.

When Gough Whitlam's government came to power in December 1972, the Commonwealth role in Indigenous affairs changed fundamentally. The new government established a Commonwealth Department of Aboriginal Affairs and introduced the term 'self-determination' as the foundation of Indigenous affairs. Recognising that there was widespread neglect of Indigenous people by mainstream services providers, especially in rural and remote regions, Whitlam encouraged the widespread incorporation of Indigenous community organisations to deliver their own services. The funding available to these bodies was largely provided by Indigenous-specific allocations that grew rapidly from \$29 million in 1971–72 to \$186 million in 1974–75.

It has been argued before that one of the most notable aspects of Commonwealth Indigenous affairs, at least until to the early 1990s, was the high degree of similarity between the approaches of Labor and Coalition governments.⁴ In the period 1972–1996, Indigenous policy was progressive and delivered results, albeit slowly, according to standard social indicators. Information in Table 1 shows change according to comparable social indicators from four censuses. These data are presented with full acknowledgement that they are highly vulnerable to a cultural critique that they reflect mainstream values only; my main reason for using them is that they are the best comparative and long-term statistical data we have available at the national level. They also provide a means to measure the current government's performance by its own criteria. In absolute terms, most of these indicators show

improvement, with two exceptions. First, the unemployment rate has gone up absolutely (Table 1), but not in relative terms (Table 2). Second, and more worrying, the proportion of the population aged over 55 years has not altered, reflecting the 20-year gap between Indigenous and non-Indigenous life expectancy, as well as rapid population growth and a youthful population.

Table 1. Social indicators for Indigenous Australians, 1971–2001.

Variable	1971	1981	1991	2001
Unemployment rate (%)	9.0	24.6	30.8	20.0
Employment to population ratio (%)	42.0	35.7	37.1	41.7
Labour force participation rate (%)	46.1	47.3	53.5	52.1
Weekly median individual income (\$2001)	Na	188.8	217.0	226.2
Home owner or purchasing (%)	22.1	21.4	24.1	29.3
Household size (no.)	4.6	4.1	4.0	3.4
Did not go to school (%)	22.7	10.7	5.1	3.2
15–24 year olds attending institution (%)	Na	6.8	16.0	25.9
Post-school qualification (%)	1.6	5.0	9.5	18.2
Population aged over 55 years (%)	7.3	6.4	6.2	6.7

Source: Jon Altman, Boyd Hunter and Nick Biddle 'Indigenous socio-economic change 1971–2001: A historical perspective on successes and failures' (CAEPR research, in preparation).

Of greater significance in terms of closing the gaps is relative well-being summarised, using the same statistics, in Table 2. Here, Indigenous/non-Indigenous ratios should track over time downwards to one for negative indicators, like the unemployment rate; and upwards to one for positive indicators, like employment to population ratios. Again in many cases this is the case, unambiguously in the areas of housing and education.

Table 2. Ratio of Indigenous to non-Indigenous outcomes, 1971–2001.

Variable	1971	1981	1991	2001
Unemployment rate	5.44	4.22	2.70	2.79
Employment to population ratio	0.73	0.61	0.66	0.71
Labour force participation rate	0.78	0.77	0.84	0.82
Median individual income (\$ 2001)	na	0.55	0.63	0.59
Home owner or purchasing	0.33	0.28	0.32	0.39
Household size	1.33	1.32	1.38	1.31
Did not go to school	39.32	14.42	5.21	3.14
15-24 year olds attending institution	Na	0.38	0.35	0.43
Post-school qualification	0.10	0.18	0.30	0.44
Population aged over 55 years	0.43	0.34	0.31	0.31

Source: Jon Altman, Boyd Hunter and Nick Biddle 'Indigenous socio-economic change 1971–2001: A historical perspective on successes and failures' (CAEPR research, in preparation).

In Table 3, information is provided on Commonwealth expenditures on Indigenous-specific programs for the same four observation points. It should be noted that because information on mainstream expenditures by federal or State/Territory agencies is unavailable, the focus is on Indigenous-specific programs. This table shows that:

- The Indigenous population as identified in the census has grown very rapidly over the last 30 years;
- In real per capita terms (last column) expenditures have increased, although interestingly this figure was as high as \$3,800 by 1975–76; and
- The proportion of Indigenous-specific expenditure administered by what is termed here the Aboriginal affairs portfolio has declined and conversely, expenditure by mainline departments has increased. In the last financial year 2003–04, this proportion was 53 per cent under Indigenous affairs and 47 per cent by mainline departments.

Table 3. Commonwealth Indigenous-specific program expenditures.

Year	Aboriginal affairs (\$m)	Other depts. (\$m)	Total (\$m)	Abor. Affairs (%)	CPI	Census pop- ulation	Abor. specific per cap.	Per capita in real terms
	A	B	A+B	A/A+B	E	F	A+B/F	G/Ex100
1970–71	20	4	24	82	18.0	116,000	207	1150
1980–81	159	60	220	73	49.4	160,000	1375	2783
1990–91	637	481	1118	57	105.3	265,000	4219	4007
2000–01	1283	1046	2329	55	132.3	410,000	5680	4293

Note: Column A was mainly Department of Aboriginal Affairs expenditure 1973–1990 and then mainly ATSIC. Column F uses census counts before redistribution of people who did not complete the question on ethnicity.

Sources: Jon Altman and Will Sanders (1991). 'From exclusion to dependence', CAEPR Discussion Paper 1, 1991; John Garden-Gardiner (2003). 'Indigenous Affairs Expenditure', Social Policy Group, Parliamentary Library, Parliament of Australia, updated 11 March.

The end of bipartisanship

An emerging divergence in approaches between the major Parties had its genesis in policy differences that emerged when Howard was Leader of the Opposition. The first was strong opposition to the establishment of ATSIC in 1989, when Howard argued that the Hawke government was creating a separate Aboriginal Parliament that would strike at the unity of the Australian people. The 1996 election platform 'For All of Us' with the implication that mainstream, not marginal interests would be central, reflected such a view. The second was an equally trenchant opposition to native title legislation, the Keating government's statutory response to the Mabo High Court judgment of 1992. Sandwiched in between was a period of parliamentary opposition under John Hewson when bipartisanship returned briefly in the form of unanimous support for the passage of the Council for Aboriginal Reconciliation legislation in 1991. This law established the Council and provided resources over a ten-year period to 31 December 2000 for a national exploration of the means to achieve reconciliation.

In 1996, after 13 years in Opposition, a Coalition government was elected without any distinct Indigenous affairs policy beyond challenging the three relatively new, but already iconic and influential, institutions of Indigenous Australia: ATSIC, the reconciliation process, and native title. This challenge was manifest in the immediate special audit of ATSIC that found no worrying impropriety, but nevertheless was accompanied by significant budgetary cuts; the oppositional and angry performance of the Prime Minister at the Reconciliation Convention in Melbourne in May 1997; and the passage of diluting native title amendment legislation in 1998.

There was also an emerging conservative critique of the lack of socio-economic progress (or economic integration) during the period 1972 to 1996, evident in aspects of what have been termed the 'history wars'.⁵ There was a media-fuelled debate between the conservatives, who harked back to the halcyon pre-1972 days of assimilation, and the progressives, who emphasised that current disadvantage was in large measure the product of historical Indigenous exclusion from the mainstream provisions of the Australian state. Paradoxically, there are no national statistics on Indigenous socio-economic status before 1971 owing to statistical exclusion, and so no basis for objectively assessing these divergent views.

Practical reconciliation as policy difference

In his election victory speech in October 1998, John Howard made a personal commitment to vigorously pursue the goal of reconciliation. Subsequently, it became clear that this was to be a particular brand of reconciliation, 'practical reconciliation', with which the Prime Minister was comfortable. This attempt at policy differentiation can be variously interpreted. At one level, a policy framework that sought to reduce Indigenous material disadvantage in the areas of health, housing, education and employment is incontestably needed. However, this was hardly a *new* approach, as it has been the central plank of Indigenous policy of all Australian governments since the early 1970s. Indeed, if a commitment to statistical equality is the defining characteristic of practical reconciliation, then Bob Hawke could justifiably claim to be its founder: In 1987, he launched the ambitious Aboriginal Employment Development Policy that sought employment, educational, and income equality between Indigenous and other Australians by the Year 2000.

What differentiated Howard's 'practical reconciliation' from his predecessors was an antipathy to the Indigenous *rights* approach, and a belief that the balance between practical and symbolic reconciliation had swung too strongly in favour of the latter during the Labor years and was jeopardising practical outcomes. I would argue vehemently that this binary opposition between the 'practical' and 'symbolic' is a false dichotomy. But taken at face value, it can assist to explain subsequent shifts in policy development. While the practical can be associated with the failed Hawke/Keating quest for statistical equality by the year 2000 (as at the time of the 1996 Census), the symbolic can be associated with their commitment to social justice and the recognition of both historic injustice and Indigenous rights. To simplify considerably, Labor favoured a more complex policy approach that sought to deliver statistical equality *and* social justice, and regarded their delivery as parallel processes, even if self-determination might not deliver equality. The Coalition believed that there was a direct tradeoff between these two strands and sought to recalibrate its policy approach to privilege statistical equality, or the 'practical', over social justice or equity that was branded 'symbolic', with little regard for the diversity of Indigenous perspectives and aspirations.

The Indigenous Funding Inquiry 1999–2001

A year after Coalition re-election in late 1998, Minister of Finance John Fahey instructed the Commonwealth Grants Commission (CGC) to undertake an inquiry into Indigenous funding and appointed a number of part-time commissioners to assist the chair Alan Morris in this task. This was a very significant inquiry undertaken during the term of the second Howard government, but its main findings have received limited attention. While the CGC was required to report by March 2001, the report was not publicly released until September 2001, after the *Tampa* incident and 11 September

and not long before the 'Children Overboard' affair and the November 2001 election. It is not surprising that this important report did not receive the attention it deserved.

The Indigenous Funding Inquiry, undertaken over 16 months, was extremely thorough, broadly consultative, and produced a detailed three-volume report.⁶ The following are just some of its main findings:⁷

- It is clear from all available evidence that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous people;
- Indigenous Australians in all regions access mainstream services at a very much lower rate than non-Indigenous people;
- The mainstream programs provided by the Commonwealth do not adequately meet the needs of Indigenous people because of barriers to access; and
- Commonwealth Indigenous-specific programs are intended to provide targeted assistance to Indigenous people to supplement the delivery of services through mainstream programs ... The failure of mainstream programs to effectively address the needs of Indigenous people means that Indigenous specific programs are expected to do more than they were designed for ...

The CGC report was a valiant attempt to highlight a perennial problem in Indigenous affairs that had its origins even before the advent of the modern policy era in 1972. Under Australian fiscal federalism it is extremely difficult to hold mainstream providers accountable to deliver services on an equitable basis to Indigenous citizens. This is partly because there is no legal requirement for administrative data that might allow objective assessment of needs-based support or its effectiveness. It also reflects a fundamental flaw in Australia's fiscal federalism, at least from the perspective of a severely disadvantaged Indigenous minority. As well, it demonstrates that mainstream providers are poorly equipped to address the diversity of Indigenous circumstances, especially when Indigenous people live in rural or remote localities beyond the reach of mainstream providers. Consequently, Indigenous-specific programs are substituting for, rather than supplementing, mainstream service provision.

Such findings supported those from two important research reports sponsored by the Australian Institute of Health and Welfare and the Australia Institute. In the former, a team headed by health economist John Deeble found that on a needs basis there was significant under-expenditure on Indigenous health.⁸ In the latter, researchers led by the late Max Neutze examined public expenditure on services for Indigenous Australians, focusing on education, employment, health and housing.⁹ They concluded

... on a per capita basis Indigenous Australians receive slightly more than non-Indigenous Australians in the areas of health and education, somewhat more in the area of employment, but significantly less in the area of housing. However, the advantages enjoyed by Indigenous people from public expenditure are small when compared to the disadvantages they suffer from in each of these areas.¹⁰

The CGC report went beyond its terms of reference that required it to assess whether Indigenous-specific expenditures were being geographically (specifically by ATSI region) distributed on a needs basis. In particular, as ATSI noted in its response, the government intended the Indigenous Funding Inquiry to demonstrate that ATSI funding allocations were being directed increasingly to urban areas where absolute

Indigenous disadvantage was lower, at the expense of remote areas, where absolute and relative needs were greatest.¹¹ The establishment of ATSIC and its regional council network in 1990 had clearly resulted in some overall redistribution in the growing Indigenous-specific funding cake (see Table 3). But the CGC was unwilling to criticise this practice, indeed it highlighted that this probably reflected relative neglect by mainstream service providers and, arguably, the popularity and efficacy of ATSIC's Indigenous-specific programs.

The government response provided by a new minister in June 2002 was very supportive of the Inquiry's major findings and articulated ten principles to be followed in addressing disadvantage. These included: better design of mainstream services to meet Indigenous need in culturally and locationally appropriate ways; ensuring coordination of service delivery within and between governments; equitably provision of services on the basis of need with a clear focus on achieving measurable outcomes; and better data collection including using an Indigenous identifier in major mainstream administrative data sets.¹² To some extent this response became entangled with the government's September 2002 response to the Council for Aboriginal Reconciliation's final report *Reconciliation: Australia's Challenge* completed in December 2000. The latter response focused primarily on an earlier Council of Australian Governments (COAG) Communiqué that recommended a national framework, measurable outcomes, partnership and governmental coordination, and public reporting.¹³ Inexplicably, it was not the CGC that had undertaken the Indigenous Funding Inquiry, but the Productivity Commission that was charged with developing this national framework in 2003 and providing annual reporting from 2004.¹⁴

Closing the gaps?

A feature of Australia's three-year federal political cycles is that they rarely match the five-yearly census cycle. In general this lack of correlation is unproblematic because there are other data sets that can be used to judge government performance. It is only for Indigenous Australians that the census remains a crucially important source of statistical information. For the first time, the 1996–2001 census period closely matched the incumbency of a particular government, and a particular approach to Indigenous affairs. 2001 Census data on health, housing, education and employment would be an important early litmus test of the 'practical reconciliation' approach.

With normal lead times in data processing, outputs from the 2001 Census did not become available till late 2002, a year after the completion of the CGC Inquiry. But since October 2003, a series of publications have questioned whether the practical reconciliation approach is succeeding in 'closing the gaps'. One needs to be clear here what closing the gaps means. One interpretation focuses on change in *absolute* Indigenous well-being over time (see Table 1). Another, more relevant interpretative tool, is change in *relative* well-being over time (see Table 2) - that is, the differential between Indigenous and non-Indigenous socio-economic status. Official reports from the Australian Bureau of Statistics (ABS) and the Productivity Commission have clearly documented that the relative results have been fairly mixed.¹⁵ It has been principally the Centre for Aboriginal Economic Policy Research (CAEPR) and the Human Rights and Equal Opportunity Commission (HREOC) who have used these data to assess any evidence of correspondence between the broad policy approach of the Labor years (1991–1996) and the Coalition (1996–2001) and outcomes. Researchers from the former concluded that: 'Despite the policy rhetoric of three

Howard governments, there is no statistical evidence that their policies and programs are delivering better outcomes for Indigenous Australians, at the national level, than those of their political predecessors'.¹⁶ The Aboriginal and Torres Strait Islander Social Justice Commissioner similarly notes that 'Overall, it is difficult to see any progressive trend towards reducing the level of inequality experienced by Indigenous peoples compared to non-Indigenous people (even in areas where there might have been some marginal improvement in absolute terms)'.¹⁷

To be fair about this broad evaluation, a policy framework that was already in place in 1996 could explain some of this lack of change, because changing policy direction takes time. Gaining traction from a new policy approach will also take time. Some lack of change in relative well-being can be explained by the rapid improvements in the socio-economic status of non-Indigenous Australians in the 1996–2001 period. This too is worrying, because a period of sustained national economic growth would appear ideal for effectively addressing and improving Indigenous relative disadvantage.

In 1991, four years after the launch of the Hawke government's Aboriginal Employment Development Policy, a workshop 'Aboriginal Employment Equity by the Year 2000' was sponsored by the Academy of the Social Sciences in Australia. This workshop demonstrated that the goal of statistical equality for Indigenous Australians by 2000 was destined to fail for a variety of reasons including historical legacy, cultural difference, diversity of circumstances, geographic location, and rapid population growth.¹⁸ It is unclear if a decade later the Howard government heeded the warnings embedded in this social sciences research. Perhaps it did, because when it committed to 'practical reconciliation' and closing the gaps, unlike its Labor predecessors it did so without declaring concrete targets, timeframes or outcomes, and without any overarching monitoring framework besides the five-yearly census on which we remain so heavily reliant.

Blaming ATSIC and the new mainstreaming

Unable or unwilling to address the main finding of the CGC's Indigenous Funding Inquiry that Indigenous-specific programs are required to cover for mainstream service providers, the government nonetheless resorted to blaming ATSIC for lack of progress in closing the gaps between 1996 and 2001.¹⁹ The government has conflated its long-term opposition to ATSIC, as a national Indigenous representative and advocacy agency, with its role in program administration. This is despite the fact that since 1 July 2003 Aboriginal and Torres Strait Islander Services (ATSIS) had existed, with the explicit aim of separating the political from the administrative functions of ATSIC.

There are real problems in focusing the blame on ATSIC for the lack of progress in improving Indigenous disadvantage. In 2000–01 (column A of Table 3) ATSIC administered \$1,114 million of the total \$2,329 million spent on Indigenous-specific programs - or just 48 per cent - delivered no education or health services and only some in housing and employment. So in terms of accountability, blaming ATSIC conveniently exonerates the government, its ministers, and its department heads of any responsibility for poor performance. Furthermore, focusing on Indigenous-specific programs as in Table 3 ignores the far more complex issue of how mainstream providers, most run by the States and Territories, might be compelled to deliver

education, health, housing and employment services to Indigenous Australians on a more equitable basis.

More worryingly perhaps, blaming ATSIC overlooks its successes in delivering program support throughout Indigenous Australia. Despite supposed government commitment to contestability in service provision based on outcomes, there has been no attempt to assess ATSIC's performance either against other Indigenous-specific program or mainstream Federal or State providers. For instance, ATSIC's largest program was the Community Development Employment Projects (CDEP) scheme. This is a work-for-the-dole scheme in existence since 1977, encompassing elements of community development and employment projects. It is run by 240 Indigenous organisations Australia-wide with 36,550 participants and a 2003–04 budget of \$520 million, 76 per cent being estimated welfare offsets. The scheme is therefore relatively cheap for government. At one level, CDEP has been important in reducing Indigenous unemployment rates, because participants are classified as 'employed' for official labour market reporting.²⁰ Boyd Hunter and John Taylor recently estimated that in 2001 the scheme reduced the estimated Indigenous unemployment rate from 43 per cent to 22 per cent - an important contributor to the employment goal of practical reconciliation.²¹ Yet CDEP does much more in terms of community development, as documented in a recent national conference.²² It has been appropriately managed by ATSIC because its regional structure and regional councils have the capacity to administer the scheme flexibly for local circumstances. It has also been extremely popular among Indigenous people, hardly indicating maladministration. The scheme's particular success is that it has enabled Indigenous communities to build organisational and political capacity, supported an extraordinary range of micro-level social and economic development initiatives and, ironically, allowed many remote Indigenous communities to provide residents with services that should properly be delivered by government agencies.

My view of ATSIC's performance in this area can be contrasted with that of the government, indicated in a press release issued on 30 June 2004 announcing changes in Indigenous services administration. The Minister for Indigenous Affairs noted that 'No longer will governments persist with the ATSIC experiment that has achieved so little for Indigenous people ... Instead mainstream departments will be required to accept responsibility for Indigenous services and will be held accountable for outcomes. In future they will work in a coordinated way so that the old programme silos of the past are broken down'.²³ This statement seems to suggest acceptance of a far broader accountability than has been evident during the period 1996 to 2004 - the new mainstreaming, it seems, will be linked to a new accountability. One might wonder why mainstream accountability was previously missing.

The ministerial statement seems to hint at more; true mainstreaming that will supersede the mere re-deployment of Indigenous-specific programs to mainstream departments. In any case, the re-allocation of successful ATSIC programs, like CDEP, to federal departments seems risky. On the one hand, one might ask how effectively the Department of Employment and Workplace Relations, CDEP's new home, will manage the highly regional and community-oriented aspects of the scheme. On the other hand, one wonders how an Indigenous-specific program within a mainstream department might avoid being 'siloed'. And such questions must be asked of ATSIC's twenty one programs that have been divided between six federal agencies. The Minister's statement also notes that Indigenous Coordination Centres will immediately

replace ATSIC regional offices, and in twelve months ATSIC regional councils will be replaced by 'new more effective representative arrangements'.²⁴ There are significant administrative and representative changes foreshadowed.

Indigenous affairs: where to now?

This brief paper examines a complex policy environment, with some apparently intractable issues, focusing on the issue of Indigenous well-being. After eight years of conservative government, I find few reasons for optimism in the field of Indigenous affairs policy.

First, a brief historical analysis indicates that since 1996 there has been a loss of earlier bipartisanship in Indigenous affairs. While some might argue that contest in broad public policy approaches is to be welcomed, the depth of Indigenous disadvantage suggests that this is not an appropriate arena for political partisanship. Arguably, bipartisanship is needed not just at the federal level, but also in the States and Territories, forging partnerships with Indigenous representative and community-based organisations.

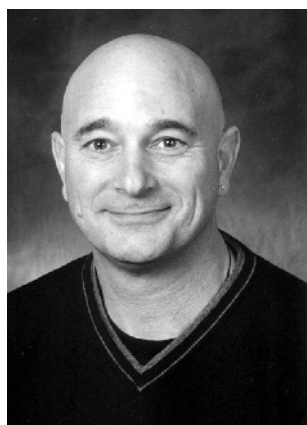
Second, in the aftermath of the Indigenous Funding Inquiry that it commissioned, the Howard government missed a decisive opportunity to focus policy development on the most intractable issue that Australian governments have faced since the early 1970s - the need for equitable delivery of mainstream services by federal, States and Territories agencies to Indigenous citizens. Compared with this, the so-called 'new mainstreaming' of Indigenous-specific programs away from ATSIC is a second order issue. The Australian state is failing to meet its obligations to Indigenous peoples as Australian citizens. Rather than focus on this, the government has invested significantly in implementing partial 'new' mainstreaming and in shifting the blame to ATSIC for lack of progress in closing the gap in social indicators for Indigenous and other Australians. It has done so in part because this aligns with its long-standing political opposition to ATSIC as an institution and in part because it accords with a socially conservative agenda.

Third, in choosing to strip Indigenous affairs of self-representation and self-governance of Indigenous-specific programs, the current government is ignoring policies that have delivered better outcomes in other affluent settler colonies like Canada, the USA and New Zealand. New Zealand, a smaller, less affluent country with a significantly larger Maori population, in proportional terms, has been far more effective in closing the gaps between Maori and Pakeha (non-Maori). New Zealand has done this using a tripartite approach that combines equitable access to mainstream services, with special access to Maori-specific programs and to a set of treaty-based property rights. In Australia, many Indigenous people will continue to live *outside* the mainstream - so the 'new mainstreaming' on its own will have major shortcomings for these sections of the Indigenous community.

Unfortunately, the costs of these lost opportunities, of changes in administrative arrangements, and of the success or failure of the new approach will only become empirically assessable in three years time, when 2006 Census data become available. Accountability will be absent in the short-term.

To conclude, in pursuing practical outcomes and distancing policy from a social justice agenda, the so-called 'symbolic', the current government may leave a legacy that could paradoxically be interpreted as only symbolic. The proposed 'new mainstreaming' fails to address a core problem of Australia's Indigenous affairs - the

delivery of equitable support to Indigenous people. That delivery will only be effective if it is pursued with appropriate consultative processes. The complex policy challenge in Indigenous affairs remains that of closing the socio-economic gaps in such a way that recognises and respects diversity and cultural difference.



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- ¹ Others have used a wider lens for such an assessment. See, for example, Dodson, Mick (2004). 'Indigenous Australians', in Robert Manne (ed) *The Howard Years*, Black Inc Agenda, Melbourne: 119–43; and Jonas, William (2004). *Social Justice Report 2003*, Human Rights and Equal Opportunity Commission, Sydney.
- ² Shergold, Peter (2004). 'Connecting Government: Whole-of-Government Responses to Australia's Priority Challenges', Management Advisory Committee, Report 4, 20 April.
- ³ Altman, Jon (1990). 'The economic future of remote Aboriginal and Torres Strait Islander communities', *Australian Aboriginal Studies* 1990/2: 48–52.
- ⁴ Altman, Jon and Sanders, Will (1992). 'Aboriginal and Torres Strait Islander Affairs', in Peter Vintila, John Phillimore and Peter Newman (eds) *Markets, Morals and Manifestos: Fightback! and the Politics of Economic Rationalism in the 1990s*, Institute for Science and Technology Policy, Murdoch University, Perth: 125–36.
- ⁵ Macintyre, Stuart and Clark, Anna (2004). *The History Wars*, Melbourne University Press, Melbourne.
- ⁶ Commonwealth Grants Commission (2001). *The Indigenous Funding Inquiry*, Commonwealth Grants Commission, Canberra.
- ⁷ *Ibid*: xvi–xvii.
- ⁸ Deeble, J, Mathers, C, Smith, L, Goss, J, Webb, R, and Smith, V (1998). *Expenditure on Health Services for Aboriginal and Torres Strait Islander People*, Department of Health and Community Services, Canberra.
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- ¹² Media release by Indigenous Affairs Minister Philip Ruddock 'Government to Focus on Indigenous Need', 27 June 2002 (http://www.atsia.gov.au/media/ruddock_media).

- ¹³ COAG Communiqué 3 November 2000 (<http://coag.gov.au>); Council for Aboriginal Reconciliation (2000) *Reconciliation: Australia's Challenge* (<http://www.austlii.edu.au>); Commonwealth Government Response to the Council for Aboriginal Reconciliation Final Report, 26 September 2002 (<http://atsia.gov.au>).
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- ¹⁹ It is noteworthy that on 30 March 2004 the Opposition announced that a Latham government would also abolish ATSIC, although its proposed restructuring is mainly focused on issues of national Indigenous representation.
- ²⁰ In contrast to participants in the mainstream Work-for-the-Dole program that remain classified as unemployed.
- ²¹ Hunter, Boyd and Taylor, John (2004). 'Indigenous employment forecasts: implications for reconciliation' *Agenda: A Journal of Policy Analysis and Reform*, 11, 2: 179–192.
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- ²³ Senator the Hon Amanda Vanstone, Australian Government Changes to Indigenous Affairs Services Commences Tomorrow, 30 June 2004, Media Release (<http://www.vanstone.gov.au>).
- ²⁴ Regional councils are democratically elected in a process supervised by the Australian Electoral Commission. The ATSIC Review *In the Hands of the Regions: A New ATSIC* (John Hannaford, Jackie Huggins and Bob Collins) that reported in November 2003 recommended an enhanced role for these regional representative institutions.



Governing Cultural Difference

Gillian Cowlshaw

It is as a member of the public — not as a social scientist — that I begin by commenting on the nauseating sight in April 2004 of the incumbent and prospective Prime Ministers of Australia competing for public applause for 'getting rid of ATSIC' because 'it isn't working'. During the limited public commentary which followed, the lack of any sense of history, or even of irony, at politicians' complacent assertion of failure, exacerbated the nausea. Little curiosity was expressed about what 'failure' meant and no public figures were asked to take responsibility for the alleged failure. Geoff Clark's continuing presence seemed to operate as a convenient display of the failures involved. An old pattern was repeated. Aboriginal people become accustomed to a particular policy and then the limited comfort of the familiar rug is pulled out from under their feet.

Having got that off my chest, let me begin by observing that ATSIC was the intended apotheosis of the policy of self-determination. What self-determination and ATSIC meant is usually considered from a national or regional perspective, but I want to add a sense of local meanings 'on the ground' in rural and remote places. Public commentary seems oblivious to the hard work that has gone on since 1970 among bureaucrats, service providers and in Aboriginal communities to make 'self-determination' work. The distinctive set of social relations that emerged in this context was marked by idealism, effort and good intentions among government officials and professional people, although ill will has not been absent. The nature of the work involved in the governing — or self-governing — of a culturally specific minority, needs considering. Not governing is not an option, yet a notion that governments could or should divest themselves of power seems to underlie much well-intended commentary.

Every circumstance has its history and the early 1970s provides clues to understanding what kind of failure the demise of ATSIC is. ATSIC was the culmination of self-determination which was itself the latest in a series of shifting policies of Australian governments following wider national and international trends in colonial governance. At the beginning of the 20th century the protection policy was enlightened and progressive, as was the subsequent assimilation policy in its time. While the small and varied Aboriginal population had been subjected to remarkably varied local conditions since 1788, by the mid 20th century the majority of communities had been restructured around pastoral work, or as residents on government or Christian missions. A few remained 'fringe dwellers', legally vulnerable to prosecution as vagrants, and a few remote areas such as Arnhem Land had retained considerable cultural autonomy.

In the 1960s there was a convergence of three factors, one political, one ideological and one economic, which determined the shaping of Aboriginal affairs for the following three decades. First, the series of Indigenous responses to colonisation had coalesced into a powerful land rights movement. Second, assimilation policies were increasingly seen as oppressive and racist so that calls for proper recognition of the Aboriginal constituency were becoming persuasive. Third, rural employment was progressively disappearing.

The policy of self determination gained almost universal assent; Aboriginal organisations would be formed and funded, allowing Aboriginal people to manage

their own governance. A comprehensive education policy would fix the unemployment of rural Aboriginal people and an extensive housing program would provide the same material conditions as those available to the rest of the society. While cultural difference would be recognised, it was implied that reducing disadvantage would iron out more difficult kinds of difference associated with marginality and poverty. That is, culture was separated from social conditions. Thus, Aboriginal communities, which had been adjusting to the assimilation regime for decades, were to be given cultural and political autonomy to re-form themselves within a new policy discourse.

In what follows I sketch some consequences of these changes at community level using observations from two field studies of race relations in which I have been involved over the last 30 years; one at the remote community of Bulman in southern Arnhem Land and the other in Bourke, NSW.¹ I group my comments under three headings: the difficulty of governing, the desire for governance and resistance to government. It should be noted that some of these processes are not unique to Indigenous communities but they are greatly exacerbated where there is a cultural frontier and a history of race-based marginalisation and poverty. Also, I am not here exploring the subjectivities characteristic of either of the overlapping categories, state officials and Indigenous people. Rather I am examining some characteristic social responses to a particular ideology and practice of governance which developed in particular conditions.

Difficulties of governing

In retrospect the hopes for Aboriginal self-determination reflected naive social theorising as well as a profound ignorance of local conditions. The Federal government of 1972, with myopic optimism and zeal, funded local Indigenous organisations and services all over the country, imagining a renewed social order led by newly educated Aborigines — or those who were about to begin studying! Erstwhile rural workers and mission inmates quite suddenly found themselves participating in a world of bureaucratic processes, funding applications, formal meetings and community representation in relation to powerful institutions, including governments. This represented a new form of an old process, where the state's activities usurped the tradition and kin based moral authority which had endured or emerged since earlier intrusions. Benign funding processes began to reshape social relations within communities and with others outside them. The hidden apparatus and consequences of this self-determination process only gradually became apparent. Aboriginal organisations, a central, common sense anchor of self-determination, have turned out to be complicated entities.

The government's remedial dreams were not Indigenous dreams. In both Bulman and Bourke, manifold difficulties were apparent, although in different ways. What was not recognised was the specific conceptual and ideological assumptions required to participate in organisations which were to both represent and provide for community needs. To take part in such processes required the transparent body of common sense knowledge which conditions public officials' understanding and permeates corporate organisations, and indeed is a foundation of modern social life. The notion of representative bodies with public responsibility and accountability is deeply entrenched and naturalised in the white community, and modern citizens more or less accept that capitalist democracy is a natural if flawed form of governance. A deeply

learned sense of when, and how, to support or complain about our representatives gives us some sense of participation in the democratic process.

But such ideas were not the 'common sense' in Aboriginal communities in the 1970s. The more autonomous communities had kin-based authority structures, and where older Aboriginal traditions had eroded, various kinds of segregation had kept communities from experiencing mainstream currents and institutions. The reality was that rural and remote Indigenous people had no experience of formal community decision making or of 'paper work'. Also, politicians and policy makers had little experience of rural blackfellas. State officials sometimes deferred to the wrong sensitivities, promoted inappropriate leaders, and were misled by local activists' rhetoric. To their surprise, imposed community-based institutions did not immediately generate collective social action. As organisations faced difficulties, it was often suggested that they were 'set up to fail', staffed as they were, initially at least, by inexperienced and often semi-literate people.

As these new organisations were forced into being, they began to mimic standard bureaucratic procedures. Meetings were held, minutes taken and decisions made to fulfil the state's intention of benefiting the community at large, by allocating substantial or small sums of money to housing programs, to new Aboriginal run enterprises and to subsidies of various kinds. But for many, for some time at least, the bureaucratic practices remained meaningless, a series of ritual requirements that could be subverted or ignored because they were 'the white man's way'. Some practices that became entrenched and normalised are improper in terms of accountability as well as democracy, and thus there is a gap between local expectations and the understandings of state officials. As one man said of his fellow participants in an independent Aboriginal organisation in Bourke in 1998:

The staff haven't had any training in accountability or accounting processes. When most of them sign the letter of offer, that's a contract... They don't know the process of holding meetings which is a legal requirement of any organisation to function. These organisations have been acting illegally. How can people self-manage or self-determine their own affairs if they don't have the skills to do it?

Added to this lack of skills and training, there was incompetence, parochial politics and nepotism, which are chronic problems of small community organisation. But these Aboriginal organisations were responsible for large budgets and they were subjected to persistent public suspicion. These conditions often led to disillusionment. One woman in Bourke rejected participation in Aboriginal organisations saying 'I'm not a member of anything. I'm a member of the human race.' She refused those aspects of an Aboriginal identity which, for others, meant engaging in endless community disputes about the control of these organisations.

There was also complicity among white officials who were supposed to be taking their direction from Aboriginal people. They could not criticise organisations or impose rules for fear of harkening back to more oppressive times. In support of self-determination, incompetence was routinely forgiven, poor or corrupt practices tolerated and low expectations became entrenched. Concealment and secrecy insulated organisations from corrective mechanisms and exposed them to private contempt and occasional public scandal. Official tolerance was often interrupted by sudden severe scrutiny leading to scandalous public tales of misspending and mismanagement of Aboriginal monies. Misspending, it should be emphasised, has

usually occurred for complex reasons other than venality. It should also be emphasised that, despite these conditions, some remarkably successful and effective organisations have emerged in some places.

Desire for governance

The difficulties do not mean that Aboriginal peoples are hostile to being governed. There is no truly autonomous domain where Indigenous social life exists independently of the state, and even remote villages have come to depend on the provision of services by the same institutions that service other Australian communities. A meaningful social life depends on a predictable social environment that operates lawfully, that is, in terms of some recognised and accepted authority. But where one system of authority is eroding under the powerful influences of another, people can become dependent on things that appear foreign and even threatening.

I observed the desire for governance among the Rembarrnga community at Bulman in the mid-1970s when the first flush of enthusiasm for self-determination was still apparent. Like self-reliance, self-control and self-discipline, self-determination seemed a term with inherent virtue. New state officials, health professionals and schoolteachers were dedicated to the liberation of Indigenous people. Public servants and patrol officers from the previous regime were viewed with deep suspicion. Bulman residents were candid about accepting offers of help. The notion of 'helping' is a familiar and a valued feature of densely interacting kin-based social groups where the interdependence between groups is also a fact. One establishes good relationships by asking for help, and asking for help itself denotes a gift of trust.²

One way to determine what Aboriginal people wanted was to involve them in a process known as consultation. In practice this meant frequent meetings. In the mid 1970s the sound of a vehicle or a plane at Bulman would be greeted with excitement until it was recognised that it was not visiting kin who were approaching but 'that Government mob' who would persuade people to attend long and awkward meetings. Plans to fund a cattle station for the benefit of this community had to be affirmed and ratified by the Bulman residents who were refugees from the cattle station they had resided on from the 1920s until the equal wages decision of the late 1960s. These men and women were experienced cattle workers but none were schooled in the vagaries of government funding and the older people were not literate.

The plans for the cattle station were outlined in a language and lexicon which were alien and obscure to the Bulman mob. At the meetings they were told they had to 'secure finance', arrange 'the takeover of Commonwealth assets in the lease area' and 'register the Gulperan Pastoral Company.' Responses were demanded so that in the end someone would call out 'Come on you mob. This fella wants an answer. You agree or not', and people would say 'Yes' or nod obediently. The Bulman mob and those trying to help them were frustrated because they could not engage in dialogue. They spoke different languages, literally, conceptually and in terms of the framework of aspirations. The well-intentioned officials were disappointed that these people did not share their emancipatory vision but spoke of mundane needs for more regular store delivery or a community 4WD. Their longer-term plans were informed by different priorities and anxieties.

Government officials thus became ventriloquists, purporting to convey community aspirations, in this case for a cattle station, to politicians and the public and then back to the communities. Those who were named as directors of the Gulperan Cattle

Company were taught to write their names so they could sign the funding agreements and agree to their responsibilities. Ignorance of what this meant was not confined to the Aboriginal people. Most officials were ignorant of cattle and business principles, let alone community dynamics, and it is unlikely that this enterprise, and many others established in this era, could have been profitable. However, their viability was never tested because funding was cut when Labor lost government in 1975. Renewed government efforts for improvement ensued but each attempt seemed to further entrench the need for further white staff to assist in making self-determination work. One of the modest desires expressed by the Bulman mob over the years has been for their own educated young men and women to replace the ever increasing and ever changing army of whitefellas who taught in the school, provided the health service, ran the store, managed the outstations, looked after the generators and so on. There is a gradual, but frustratingly slow fruition of such desires.

Little changed in such remote communities when ATSIC was established in 1990. Department of Aboriginal Affairs (DAA) staff simply transferred to ATSIC in the interests of continuity of service provision — as well as continuity of employment. ATSIC did not dissolve the confusion of the cultural frontier which still baffles both whitefellas and blackfellas. Voting for ATSIC representatives still meant voting for strangers and the bureaucratic processes of governance remained the same.³ However, during the 1990s, with tutelage and propaganda about the virtues of ATSIC and how to vote for their own representatives, people have gradually become familiar with these processes. Whole communities have adjusted to their operations just as they had to the DAA before. Thus the demise of ATSIC after only 14 years means further confusion. Aboriginal communities will have to adjust yet again to the new ways in which the state says it is trying to help them.

The DAA official in charge of making self-determination work in Bourke in the early 1970s also found Aboriginal people who wanted governance. For some time, a vocal and vigorous local Aboriginal rights organisation had voiced the need for housing and health services, for land and for self-determination. Moreover, they had some experience of whitefellas' institutions and spoke English, although with a distinctive local idiom. In the early 1970s millions of housing dollars became available to improve the condition of those who were living in humpies or tin shacks. As at Bulman, the price was attendance at meetings. There had to be a housing cooperative with a committee, a secretary and president, regular meetings and signed forms in order to access the money. Decisions about the kinds of houses and who should have them were placed in the hands of these fledgling organisations. The local DAA official inveigled and coerced people who had some idea about how to do these things into cooperating, and the result was the mimicry described above.

Often those who had been activists and spokespeople for Indigenous rights or land rights were seen as appropriate candidates for the new kind of governmental work. But these positions and the very fact that Aboriginal organisations were being funded, dealt a death blow to the moral purity and passion of the land rights movement. It became difficult to retain the mantle of a just battle against unrecognised injustice in the face of government good will, particularly the determination to pay Aboriginal people to run their own organisations. Demanding and politically rebellious young blacks could not bite the hand that was so zealously feeding them.

In every community, large and small, a number of people took up these proffered roles, willingly or reluctantly. They had access to a new social identity: as

representatives of one's people; or ministering to their needs within the organisations established to provide the gateway to citizenship and equality; or else, within established legal, educational or health institutions. Well paid jobs, social esteem and public respect entirely reshaped many individuals' lives at the same time as they created new divisions within communities. An ATSIC representative, a board and committee member, or a liaison officer to other institutions, would find themselves in an invidious position. Kin networks are not only affective and symbolic but entail responsibilities which readily take priority over responsibility to the state, most obviously in relation to welfare incomes and the rules of organisations. Local organisations thus became a fraught domain of complex and tense social action. One old man in Bourke expressed the general awareness of divided loyalties when he said: 'You can't get dark people [as managers]. You got to get white people. You can't have your own colour', and he pointed to the obligations to kin as precluding the ability to do the job in an impersonal and even-handed way.

Frances Peters-Little says that democratic principles and bureaucratic forms do not sit easily beside family rivalries and intimate personal relationships, remarking on the 'torn loyalties' experienced by community workers. She says wryly, 'Aboriginal people across Australia have become so good at playing the "community game" that many have begun to believe it'.⁴ Perhaps what she is observing in her own community is the gradual adaptation, of and to, values of representative democracy, which does not, of course, mean community consensus.

The desire for proper governance is now directed towards Aboriginal representatives and officials, people who took up the proffered roles of leading their people into a better future. Many of these 'leaders' have continued to repeat their earlier demands, encouraged by the sympathy professed in the national discourse of concern and reconciliation. It is easier to articulate standard demands for more and better government assistance on the basis of historical injury, than to confront difficult and complex local problems. At the annual ball of a regional Aboriginal organisation in the late 1990s, the senior Aboriginal bureaucrat's speech consisted of a lengthy recitation of the statistical indicators of Aboriginal disadvantage without any suggestions that there might be local strategies or remedies that his audience could devise for the ills of their own poorer Aboriginal clients. This seemed to me an example of what Lucashenko identified as an ongoing striving for 'higher victim status'.⁵ In the late 1990s national pessimism converged with local resentment and anger to produce an entrenched language of hopelessness. The attribution to Aboriginal people of permanently wounded identity is a powerful barrier to fledgling alternative meanings and desires in local communities.⁶

I am arguing that hidden behind offers of autonomy, including self-determination and ATSIC, was a pervasive diagnosis of victimhood and the fear of blaming these victims has often paralysed the white critics and prevented the naming of failures. Concerned and troubled whitefellas eagerly listen for tales of black suffering which inspire them to new efforts to help. The result was that more whitefellas had to put more effort into ministering to helpless, damaged or delinquent blackfellas. I believe that the struggles of Indigenous people to develop a form of modernity to suit themselves is being hampered by a stifling and disempowering national sympathy. This sympathy is now eroding, making for new conditions which require new strategies.

Opposing government

The riot in Redfern in 2004 attracted a huge amount of public attention, much of which expressed pity or anger about Aboriginal people mindlessly attacking the police who were, we were assured, doing a good job under difficult circumstances. But there is a history of riotous, destructive and outrageous behaviour in Indigenous communities which is interpreted as senseless destruction and is explained reductively as due to alienation, unemployment and poverty. I contend that the logic of such public events goes far beyond the sympathetic but superficial diagnosis of aberrant behaviour. These events contain meanings and messages that are more coherent, logical and positive than simply reactive violence. I am not arguing that the 'rioters' are politically sophisticated or effective, nor that they could clearly articulate the meanings that can be seen here. But I do contend that the riots provide a revealing commentary on the conditions of Indigenous existence. They can be seen as an extreme expression of a specific political orientation which has developed in a segment of the Indigenous population, an orientation that responds to its own alienation as a definitive and constitutive condition of existence. Let me explain.

A hidden struggle over what Aboriginal identity is to mean has emerged since the revalorisation of Indigenous identity and community in the last thirty years. The nation has legitimised a distinct and separate identity for Aborigines with a celebration of cultural difference and an emphasis on the tragedy of dispossession. But these celebrations are part of a predominantly white discourse and within Aboriginal communities no unified celebration has taken place.

One basis of an Indigenous identity is as *other* to settler society, an otherness that is deeply imbued with the injuries of colonial history. Unique ancient traditions, a painful history and recalcitrant politics are entwined in an Aboriginal identity centred on the perceived conflict with white society. Mistrust and resentment are responses to white society's traditional misperception and rejection of black traditions, and this negative relationship has become, for many, a foundational condition of Aboriginal social existence. There is ample and continuing evidence of white hostility and the chronic resentment it evokes, but there are also elements of a self-fulfilling prophecy here. The fact that Aboriginality is always being played out in front of a critical audience, sometimes present in the flesh but always lurking in the imagination, enhances the sense of loyalty to those who display marginal, disreputable or oppositional behaviour.

The notion of being 'disreputable' is one donated by the white world. Disreputable can be transformed into true blackfella, warrior, active follower of Indigeneity. The stigma of poverty and marginality can be rendered as sources of pride and fulfilment. There is deep distrust of white attempts at reconciliation, which is seen as 'trying to get around you' in order to betray you. Indigenous people with this orientation are refusing to abandon their past, be it humiliation and hurt or honourable rural labour and survival. An older man in Bourke said he was going to vote for the notoriously racist One Nation party in 2001 because Aboriginal organisations were corrupt. Later he told me in tones of amused and bitter irony that he had not voted: 'Waste of time. I'll stick to the early days when we didn't have to vote, hunted down like mongrel dogs. I'll stick to the days when we weren't allowed to vote. I'll stick to that rule, me.'

Here is expressed a disillusionment with the possibility of proper governance, and a sense that in the past, one knew where one stood as an Aboriginal person. The familiar hostility from and to mainstream society here becomes crucial to Aboriginality. Incorporation into what is seen as whitefellas' society is perceived as threatening to

established blackfella ways. Such people refuse to be inveigled into new aspirations, reject what are seen as 'white ways' and accuse those who take on governmental roles as being 'coconuts' or 'flash blackfellas'. Well-paid jobs in government institutions are seen as bribes leading people to 'forget who they are' and the temptations are apparent to all. Elected representatives, the story goes, are benefiting themselves and their families while losing their sense of where they come from. Outspoken leaders who talk back to whites are favoured, and habits and manners are monitored as clues to loyalty. Style becomes a significant marker of the kind of Aboriginal identity which refuses to forgive white society for the damage it has done to blackfellas. These are the people who reject any notion of better governance; they cleave instead to an idea of a radical autonomy or sovereignty.

But this orientation is not accepted by all, and it seems to me that in rural and remote communities there is an ongoing tension surrounding the future of Aboriginality. There are many who want to take advantage of new opportunities and who reject an identity that depends on remaining outside established institutions — but often inside the gaols. The struggle is clear to this man who does not drink and who scoffed at the judgements of those who 'go to the pub and talk shit':

There was that perception that if you didn't drink then you weren't black. You were called names to put pressure on you. Perhaps they're conforming to this white idea that blackfellas were only drunks and no good lazy bastards. Just because you're black it doesn't mean you should be portrayed the same as all the drunken police clients.

However, this man also states that blackfellas always remain outsiders, and he understands that the 'police clients' have good reasons for their convictions. He asserts his loyalty to blackfella ways through his casual clothing, robust manner and language, which counter the fact that he holds a government job. His demeanour is one small element in carving out an autonomous and authentic Aboriginality that is independent of white approval — and of white disapproval.

As this case shows, individuals are not comfortably located as either outsiders or as future oriented insiders. Rather, the playing out of this tension occurs within most individuals' everyday lives. The brazen flaunting of things deemed disreputable, such as the riotous behaviour that comes to public attention, is more often greeted by Aborigines with admiration, sympathy and laughter than censure, for censure smacks of disloyalty, not merely to the person and their practice but to the positioning of blackfellas in opposition to the white establishment. The outsider role is played out most clearly among those who show ascendancy in the face of shame, a refusal to give in to emotions of humiliation or inferiority. I have observed the flamboyant playing out of an Aboriginal style in a deliberate display which challenges the niceties of public sociality. It seems to say 'If you lose your pride, why not live shamelessly'?

But there are many for whom an honourable life depends on being free of the kinds of power wielded by police, free of the humiliation attendant on being part of the wilder Aboriginal sociality, and free of the disorder and humbug entailed in relationships with abject kin. Many local people simply hope life will be better rather than worse than the past; they want a steady income and a decent life. Others are more ambitious and encourage their children to take up opportunities through schooling. Though always in jeopardy of being derided as coconuts, such people are also armed with an

awareness of a shifting global politics of race. 'The educated ones don't feel helpless' said one man, 'we know there's light at the end'.

Despite the powerful oppositional stance apparent in the social life of Aboriginal communities, the desire for participation in better governance is, I believe, gaining strength in rural NSW, although this may entail forgetting, forgiving or ignoring the continuing forms of disrespect shown towards Aboriginality. It is aligned with a revived interest in older Aboriginal cultural traditions which have gained a degree of formal legitimacy in the Australian state. While these older traditions may appear to have little concrete presence in places where languages, ceremony and specific kinship structures have eroded, elements of that precious heritage are being revived to give a positive spin to local Aboriginality. This response answers a hunger for the symbols of unique Indigenous business, beyond the reach of whitefellas.

Finale

In the 1970s it became a truism that Aboriginal people should, as far as possible, determine the way they were governed. Although no precedents or models were called upon to show how a self-determining minority could operate within the nation state, such a clear, simple and progressive notion appeared to offer a solution to all kinds of political and cultural problems which an oppressive history had created. Major political parties, the public and Aboriginal people all seemed to agree that if Aborigines were asked what they wanted and given the resources they needed, the problems governments had in governing them would evaporate.

It is now apparent that attempts by governments to divest themselves of power over local communities was fantasy or self delusion, but the pretence was established as practice. Governing a minority with a different history, culture and social aspirations — even under the rubric of self-government — raised problems that turned out to be very similar to those which became apparent during the assimilation era. Perhaps assimilative pressures and processes are inevitable when two peoples live side by side and one is hugely more powerful. The direction of change is probably also inevitable. However, calling on some natural process to divest governments of responsibility for policies and practices does not remove their obligation to govern well.



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¹ Cowlishaw, G (1988) *Black, White or Brindle; Race in Rural Australia*, Cambridge University Press; (1999) *Rednecks, Eggheads and Blackfellas: Racial Power and Intimacy in Australia*,

Michigan University Press; (2004) *Blackfellas, Whitefellas and the Hidden Injuries of Race*, Oxford , Blackwell. The arguments and illustrations in this article are simplified and truncated versions of material that is fully explored in these books.

- ² Such ideas have been documents from many Aboriginal Australian communities, most notably by Fred Myers (1986) in *Pintupi Country; Pintupi Self*. Canberra; Washington Australian Institute of Aboriginal Studies with Smithsonian Institution Press.
- ³ See Nelly Camfoo's comment in G Cowlshaw (ed) (2000). *Love Against the Law: the autobiographies of Nelly and Tex Camfoo*. Canberra, Aboriginal Studies Press: 110.
- ⁴ Peters-Little, Frances (2000). *The Community Game: Aboriginal self-definition ad the local level*. AIATSIS Research discussion paper 10: 14.
- ⁵ Lucashenko, Melissa (1997). Violence against Aboriginal women: public and private dimensions, in S Cook & J Besant *Women's Encounters with Violence: Australian Experiences*, Thousand Oaks, Sage Publications: 158.
- ⁶ In this short essay I cannot do justice to the initiatives and ideas which are present among local people who may be frustrated by those in entrenched leadership positions.



Prospects for Regionalism in Indigenous Community Governance

Will Sanders

TSIC is often referred to as an experiment by the Commonwealth government in Indigenous self-determination or self-management, in giving some degree of control and decision-making power in Commonwealth Indigenous affairs programs and policies to an elected structure of Indigenous people, albeit still with ministerial oversight and involvement.

ATSIC was also, however, an experiment in Commonwealth-sponsored regionalism. The National Aboriginal Conference (NAC) and the National Aboriginal Consultative Committee (NACC) were the first two Commonwealth experiments with elected, national Indigenous representative bodies. Criticisms of these bodies were not only that they were just advisory and that executive power still rested with the Commonwealth Minister and Department of Aboriginal Affairs, but also that they were not sufficiently connected with Aboriginal communities and organisations 'on the ground', with Aboriginal people living and operating in particular local communities – as all people of course, Aboriginal or not, ultimately are.

The NAC and the NACC had 35 and 41 elected members, respectively, to cover the whole of Australia. That's about a quarter of the number of the seats in the House of Representatives. So the relationship between many Aboriginal communities and their elected NACC and NAC representatives was clearly a rather distant one. The ATSIC experiment tried to improve this situation by creating an elaborate hierarchy of Aboriginal representation from regional councils through to the national Board of

Commissioners. After consultations with Aboriginal people in the late 1980s, there were originally 60 ATSIC regions with almost 800 positions for elected Indigenous representatives. This was an attempt to connect the national and the local levels of Indigenous community governance through an intermediate experiment in regionalism. In an attempt to get close to the people on the ground, ATSIC's intermediate regionalism had two levels of aggregation, called regions and zones. Zones, of which there were 17 throughout ATSIC's life, were groupings of regional councils each of which elected a national Commissioner from among their regional councillors. In an attempt to balance representation of regions with very different populations, zones ranged from one to eight regional councils in the 60 region ATSIC which existed from 1990 to 1993. In the 35, or 36 region ATSIC, which existed from late 1993, zones ranged from one to four regional councils. It is also notable that in the 60 region ATSIC, there were a number of instances of regions cutting across State/ Territory boundaries and of a zone, the Central Australian zone, covering parts of three State/ Territory jurisdictions.

While they existed, these cross jurisdictional arrangements made ATSIC a particularly bold experiment in Australian political regionalism. However, all except one of these cross jurisdictional arrangements - the inclusion of the ACT in the Queanbeyan ATSIC region - disappeared in 1993. At that point ATSIC in a sense became a considerably more conservative experiment in Australian political regionalism, reflecting government administrative priorities and wishes more than the preferences of Aboriginal people.

This delineation of regions as sub-divisions within state and territory boundaries has been the predominant conception of regions within Australia, and in 1993 the bolder aspects of ATSIC regionalism retreated into this politically traditional frame.

Regionalism in Australian politics

Regionalism is often used as a critique of existing institutional structures and processes at the local and State/ Territory, and to a lesser extent the Commonwealth, levels of Australian government, in an attempt to modify and improve those governmental structures and processes. This analysis suggests that the structures and processes we have already in Australian politics and government are either too big, in the case of the States and Territories, or too small, in the case of local governments. Regionalism is paraded as the 'just right' size solution somewhere in between; and sometimes, in its more radical form, even involves regions crossing State and Territory boundaries. There is a long history of this sort of regionalism within Australian politics, going back to the new states movements of the early years of the twentieth century and coming through, for example in the 1970s, with the Whitlam government's Department of Urban and Regional Development (DURD). DURD encouraged Australia's then 900 or so local governments to work together as 76 regions in order to deal more effectively with common urban development problems, such as land supply and sewerage provision.¹

The history of these sorts of experiments in regionalism within Australian politics suggests that they were of fairly limited success. New states movements have never come to anything, and while DURD did achieve some success in outer suburban land supply and sewerage provision, it also antagonised many more established organisational players in Australian urban development, and was in the end disbanded. Committed regionalists argue that such innovative regional structures and processes are never really given a chance by the more established and entrenched

local and State/ Territory interests. To some limited extent that may be true. But it is often the case that the States and Territories are in fact quite supportive of some form of regionalism, and that it becomes clear in the process of exploring regional divisions that different levels of regionalism suit different policy or issue areas.

Earlier this year, Sam Jeffries commented that within the ATSIC Murdi Paaki region in western NSW, there were policy or issue areas on which Broken Hill sat apart from the communities and local governments along the Barwon and Darling Rivers in terms of interests and involvement. Water management policy and related issues in Western NSW brought together local interests in one regional configuration along the Barwon Darling River, whereas other issues called for different regional boundaries.

In practice, regional groupings are used in many policy or issue areas of Australian government, such as health, education, infrastructure provision and economic development. Often the different logics of these policy areas suggest quite distinct regional groupings, leading to frustration that one policy area's regional grouping does not coincide with another's. Finding common ground is difficult, as there are genuinely different logics of regional organisation within different policy areas. The difficulties with regionalism cannot be solely attributed to the lack of support from States and Territories.

With regard to ATSIC's regionalism, it is worth noting that in one case, that of Tasmania, ATSIC's regionalism did correspond with a State jurisdiction. In Victoria, there were only ever two ATSIC regions and one zone within the State. South Australia too was an ATSIC zone after 1993 with three ATSIC regions, though between 1990 and 1993 it had four and half regions, one and half of which were included in the cross-jurisdictional central Australian zone. So for these three States, ATSIC's regionalism, particularly at the zonal level and after 1993, was no different from organisation on a State-wide basis. In the Australian Capital Territory, ATSIC's regionalism was in a sense 'too big' to be of much use to the ACT government, as ATSIC's Queanbeyan region covered a significant portion of south eastern New South Wales as well as the ACT.

In the four other State/ Territory jurisdictions, ATSIC's regionalism took on the more usual form of a relatively large, and perhaps quite useful, number of subdivisions within the State or Territory. After 1993 there were six ATSIC regions within NSW, seven in the NT, eight in Queensland and nine in WA. However, even within these jurisdictions ATSIC's regionalism did not necessarily correspond with the regionalism of other issue or policy areas.

Northern Territory regionalism

There are around seventy local or community governments in the Northern Territory, many of which represent remote, predominantly Indigenous localities. Territory governments in recent years have been encouraging some of these local governing bodies to come together as more regional groupings. In May 2003, when announcing a Building Stronger Regions strategy, the Northern Territory's Minister for Community Development, John Ah Kit, identified 21 possible regional groupings of local governments covering the Northern Territory. While noting, in doing so, that regional development 'is a term that tends to suffer from differences of interpretation', he also stated that in 'this strategy, the term is used to describe outcomes achieved in areas bound together by a "community of interest", or common purpose, geography, shared issues or challenges'.²

Although these are appealing concepts, the idea that they lead easily to the identification of clear functional regions is misleading. Ah Kit himself went on to say that:

There has been a tendency to look at the Territory as comprised of four or five regions. For government administrative purposes five regions tend to be identified. There are, however, seven Regional Councils of the Aboriginal and Torres Strait Islander Commission and four Aboriginal Land Councils. Other organisations break the Territory into the Top End and Central Australia or Darwin and the rest.³

The four or five regions for Northern Territory government administration are a reflection of the Territory's four major, predominantly non-Indigenous urban areas; Darwin, Katherine, Tennant Creek and Alice Springs, acting as regional centres, with Nhulunbuy in East Arnhemland sometimes also being given this status. The two fold division groups these urban centres and their hinterlands into a Top End three and central Australian two. The larger numbers of regional groupings sometimes used in the Northern Territory are more Indigenous and non-urban in their focus. Ah Kit could have pointed out that two of the four Aboriginal Land Councils, the two large ones, also organise their work and constituency on a regional basis – of nine regions in the case of the Central Land Council and seven regions in the case of the Northern Land Council, giving in a sense 9+7+2, or 18 regions for Aboriginal land purpose in the Northern Territory. He could also have noted that ATSIC in its original 1990 form, which reflected more strongly Indigenous people's preferences rather than those of government, had twelve regions in the Northern Territory. So the number of regions that have been identified in recent times for various governmental purposes in the Northern Territory varies from two, to four, to five, to seven, to twelve, to eighteen, to twenty one!

As noted elsewhere,⁴ the desire for highly localised autonomy in Indigenous community governance has given rise to almost seventy local governing bodies in Indigenous communities across the Territory. It is by no means certain that these local governing bodies would willingly come together even in the twenty one regions suggested as possibilities by Ah Kit. For the foreseeable future, regionalism, as an aggregation of existing local governing bodies in the Northern Territory may reach as many as fifty regions, if Aboriginal people have their say. It is apparent that there is even less likelihood of ideas of regional boundaries coinciding neatly in the Northern Territory, around one particular geographic level of organisation.

Torres Strait Regionalism

Another example, which is often referred to as the strongest and most well-established instance of regionalism in Indigenous community governance in Australia and thus seen as a possible model for other regions, is that of the Torres Strait. There is no doubt that Torres Strait does have a very strong form of regionalism in its Indigenous community governance. When ATSIC was being set up back in the late 1980s, the Torres Strait was able to negotiate a distinct regional council with different electoral arrangements from other ATSIC regional councils. In 1993-94, it also was able to negotiate for this unique regional council to be transformed into a regional authority under separate provisions of the ATSIC Act. I have no doubt that, as (and if) ATSIC is being abolished, that Torres Strait will again push for distinctive treatment and will in all likelihood succeed.

Torres Strait's regionalism is so strong partly because it is built on a form of micro-nationalism in which Islanders distinguish themselves not only from non-Indigenous Australians, but from Aboriginal Australians as well. Islanders see themselves as Melanesian seafarers and gardeners who have quite different cultural traditions from hunter-gatherer Aboriginal Australians. And they use this sense of difference in their dealing with the Queensland and Commonwealth Australian governments to call, repeatedly and usually successfully, for distinctive political arrangements.

However, even in Torres Strait, regionalism has its limits and complications. First, we should acknowledge that strong Torres Strait regionalism is a reflection of strong Torres Strait localism. Individual Island Councils, of which there are seventeen, guard their autonomy strongly, while also coming together for specific purposes as a regional group. The Torres Shire Council, which is in effect the 18th and largest island council, covers a settlement centre with a more mixed, but still predominantly Indigenous population, and also guards its autonomy strongly. In 1997 when a House of Representatives Standing Committee report on Torres Strait suggested that the Shire be folded into a new regional assembly while the Island Councils remained, the Shire, through its Torres Strait Islander Mayor, launched a vigorous and successful attack on the Committee for making such a ludicrous suggestion.⁵ The Torres Strait regional grouping is in many ways a confederation of 18 local councils, rather than in any sense a separate regional entity. Its strength as a regional entity may indeed come from and reflect this respect for local autonomy. This is not regionalism which attempts to over-ride or obliterate localism, but rather regionalism which builds on and complements localism.

Second, it should be noted that as with most regionalisms, there are boundary problems in Torres Strait. On the tip of Cape York in the northern peninsula area, there are two communities which have Island Councils and are recognised as Islander communities and there are three communities which have Aboriginal Councils under different Queensland legislation. Over time, however, the populations of the five communities are becoming increasingly mixed, with Islanders becoming residents of the Aboriginal communities rather more than the reverse. The regional boundary is not clear and no doubt there are times and policy issues in which these five northern Cape York peninsula communities are themselves treated as a region or sub-region cutting across the Torres Strait/ Cape York regional divide.

Third, there is the complication that increasing numbers of Torres Strait Islanders have migrated south over the last fifty years and now live quite a long way outside the Torres Strait region; in Cairns, Townsville, Brisbane or elsewhere in Queensland or Australia. The 2001 census identified almost 7000 Islanders in the Strait, 19000 in the rest of Queensland and another almost 18000 in the rest of Australia. In line with Torres Strait's micro-nationalism, these Torres Strait Islanders often want some involvement in, and connection with, homeland affairs. So Torres Strait's regionalism also has to cope with large numbers of people outside the region still claiming some right to be involved in the region's affairs.

Torres Strait regionalism is strong and it does have some potential as a model for regionalism in Indigenous community governance elsewhere in Australia. But it also needs to be recognised as a regionalism built on considerable respect for localism and a particular form of micro-nationalism which might not be easily emulated elsewhere in Indigenous Australia.

Conclusion

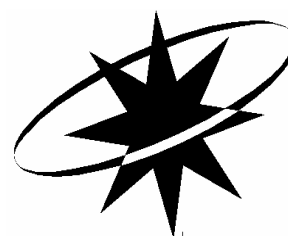
Let me reiterate that concepts of regionalism in Australian government are generally about State/Territory and local levels, and critiques framed around those levels of government as either too big or too small in their geographic and organisational scale. Although this has an alluring simplicity, in practice regional organisation has numerous problems. Different policy and issue areas suggest different numbers and shapes of regions, and resolution is frustratingly complex.

I do not want, however, to be too negative about regionalism's prospects. Regionalism in Indigenous community governance, as in other policy and issue areas, can be a quite good and useful tool, if our expectations of it remain modest. Regionalism is not a panacea for organisational and geographic scale problems in Indigenous community governance any more than it is in other policy or issue areas of Australian government. But it can be, when carefully negotiated, a useful tool for managing resources and participation more effectively.

[This paper is based on a seminar given to AIATSIS on 27 April 2004.]

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- ¹ Lloyd, CJ and Troy, PN (1981). *Innovation and Reaction: The Life and Death of the Federal Department of Urban and Regional Development*, George, Allen & Unwin, Sydney.
 - ² Ah Kit, J (2003). *Building Stronger Regions, Stronger Futures: Northern Territory*, Northern Territory Government, Department of Community Development, Sport & Cultural Affairs.
 - ³ *Ibid.*
 - ⁴ Sanders, W (2003). 'Dispersal, Autonomy and Scale in Indigenous Community Governance: Some reflections on recent Northern Territory experience' Seminar given at the Australian National University, North Australia Research, Darwin, 30 October.
 - ⁵ Sanders, W (2000). 'Torres Strait Governance Structures and the Centenary of Federation: A Missed Opportunity?' *Australian Journal of Public Administration*, 50, 3: 22-33.



Academy News

Research Program

A number of ARC Special Projects have reached the publication stage. In October 2004 the University of New South Wales Press will publish the research arising from the 'Rural Sustainability' project entitled *Sustainability in Rural Australia*.

The manuscript from the 'Rethinking Wellbeing' research project is currently being considered for publication and will be published under the title *Rethinking Well-Being: Essays on Health, Disability and Disadvantage*.

The manuscript from the project 'Building a Better Future for our Children' is currently in preparation. A number of chapters have already been submitted to Cambridge University Press for consideration.

A workshop was held at the University of Technology, Sydney on 17 June for this year's funded ARC Linkage Learned Academies Special Project 'What Is To Be Done With Management Ethics? Addressing National Needs and Priorities'. The purpose of this project is to bring together an interdisciplinary team of Academy Fellows and other national and international scholars to discuss and analyse ethics as they relate to organisation practice and managerial behaviour across the whole range of public, private and third sector organisations. In light of contemporary organisational and public concern over the ethical conduct of business, both in Australia and internationally, the research team will analyse and critique contemporary practices and approaches to ethics in management.

At the workshop, the project directors Stewart Clegg and Carl Rhodes of UTS welcomed the research team which includes contributors from the University of South Australia, the University of NSW, Universidad Autónoma Metropolitana-Iztapalapa, México, Victoria University, the University of Maryland, University of Nijmegen, Netherlands, RMIT and the University of Sydney. Discussion and development of proposals took the project to a well formulated consensus. Final papers are to be submitted by November, prior to a major Symposium on Management Ethics which will be held at UTS on 16-17 December 2004. The research project has already attracted interest from publishers in the UK.

ARC Linkage Learned Academies Special Projects 2005

In May the Academy submitted five Expressions of Interest for funding consideration in 2005. This year for the first time the ARC has short-listed two applications supported by the Academy to proceed to the full-application stage of the selection process: 'Patterns of population mobility and internal migration in Australia' will be directed by Peter McDonald (ANU) and Martin Bell (University of Queensland); and 'Innovative Public Policy Through New Principles for Sharing Risk' by Bruce Chapman and Glenn Withers (ANU). The ARC is expected to announce successfully funded projects for the Learned Academies in October.

ARC Linkage Projects (Round One) 2005

In April 2004 a research proposal entitled 'The Social Sciences and the Making of Postwar Australia' was submitted to the ARC for consideration for funding in 2005. Chief investigators for the project are Professor Robert Pascoe (Victoria University of Technology) and Professor Stuart Macintyre (University of Melbourne). Both the Academy and the National Library of Australia have been listed as Industry Partners in the application. Results of this round will be announced later this year.

Should funding be approved, the project will explore the foundational significance of the social sciences in the creation of modern Australia. Apart from filling a critical gap in our understanding of the development of postwar Australia, through exploring the historical relationship between the social sciences and public policy, such a study will point to ways in which such research might be more widely utilised in the creation of effective policy.

Workshop Program

The Workshop Committee has approved an additional workshop, bringing the total number for the 2004-05 round to seven.

The Deregulation of the Australian Labour Market: A Workshop in Honour of Keith Hancock. Convened by Professor Russell Lansbury (University of Sydney) and Professor Joe Isaac (University of Melbourne). The workshop is being held in honour of Professor Keith Hancock, former President of the Academy, who has made great contributions not only to scholarly research on the Australian labour market but also to practical aspects of labour market regulation through his role as Deputy President of the Australian Industrial Relations Commission. The workshop will examine the degree of legal regulation of a progressively relaxed Australian labour market, and the centralised industrial relations system which prevailed for many years and was replaced by a decentralised system dominated by enterprise bargaining.

It is argued in some quarters that deregulation has not gone far enough and that employers should be given greater freedom from institutional and legal restraints in determining the terms of employment. The rationale for such arguments is often linked to the exposure of the Australian economy to global competition brought about by the deregulation of the Australian financial market and the substantial lowering of Australian trade barriers. These circumstances impose on Australian industry a compelling need to increase productivity if it is to survive and to provide employment and afford higher real wages to its workers. It is further argued that such productivity growth can best be delivered in a highly competitive market with a minimum of restriction on the terms of employment.

Some time has elapsed since the substantial dismantling of the centralised industrial relations system and the exposure of the Australian economy to greater international competition. The workshop will therefore provide a timely opportunity to draw on various experts in the area to deal with the issues relevant to economic and social outcomes in the operation of the deregulated Australian labour market.

Recently Completed Workshops

Evidence into Policy: What Works in Ageing. Convened by Helen Bartlett (Australasian Centre on Ageing, University of Queensland). University of Queensland, 22-23 April 2004.

Portrait of a Nation 2003: Reporting on the Inaugural Australian Survey of Social Attitudes. Convened by Rachel Gibson, Shaun Wilson (ACSPRI Centre for Social Research (ACSR), RSSH, ANU), and Gabrielle Meagher (School of Economics and Political Science, University of Sydney). Australian National University, 7-8 June 2004.

Australian Women Facing the Future: Is the Intergenerational Report Gender Neutral? Convened by Christina Lee (Schools of Psychology and Population Health, University of Queensland). Australian National University, 1-2 July 2004.

Participation and Governance in Regional Development. Convened by John Martin and Robyn Eversole (Centre for Regional and Rural Development, RMIT). Hamilton, Victoria, 1-3 July 2004.

Australian Multiculturalism and Political Theory: Balancing Rights and Responsibilities in a Diverse Society. Convened by Geoffrey Brahm Levey (School of Politics & International Relations, UNSW). University of New South Wales, 8-9 July 2004.

Forthcoming Workshops

Corruption: Expanding the Focus. Convened by Manuhia Barcham, Barry Hindess (Political Science Program, RSSH, ANU) and Peter Larmour (National Centre for Development Studies, Asia-Pacific School of Economics and Government, ANU). Australian National University, 30-31 July 2004.

The Deregulation of the Australian Labour Market: A Workshop in Honour of Keith Hancock. Convened by Russell Lansbury (School of Business, University of Sydney), and Joe Isaac (Department of Management, University of Melbourne). Australian National University, 25-26 November 2004.

Aborigines, Culture and Economy: The Past, Present, and Future of Rural and Remote Indigenous Lives. Diane Austin-Broos and Gaynor Macdonald (Department of Anthropology, University of Sydney). Sydney, 3-4 December 2004.

Policy and Advocacy Program

We are pleased to announce the members of the newly formed Policy and Advocacy Committee (PAC): Michael Keating (Chair), Peter Saunders (Workshop Committee Chair), Stuart Macintyre (Research Committee Chair), Ian Castles, Meredith Edwards, Sue Richardson (ASSA President), Tom Stannage, and Patrick Weller. Secretariat staff on the Committee includes John Beaton, John Robertson, and Mark Pinoli who will provide administrative support to the Committee.

The inaugural meeting of the PAC was held on 23 March 2004. The formation of the Committee was grounded in a special scoping meeting held in November last year. Fellows of the Academy with an interest and expertise in policy analysis, development and advice were invited to attend to canvas ideas for policy areas where ASSA could play a more active role through its existing programs, such as the Workshop and Research Programs and symposia, and consider appropriate new activities.

The Committee discussed a number of issues at the inaugural meeting including the importance of identifying key issues of national importance to engage in policy development. Also highlighted were the new opportunities created by the Department of Education, Science and Technology (DEST) grant: to advocate the importance social sciences have in informing sound policy development; as a facilitator of

constructive social sciences/policy outcomes; and to increase its contribution to the social, political, and intellectual life of the country.

The *Occasional Paper Series* will be a major vehicle for the publication of policy outcomes. Policy papers printed under this series will be further badged as 'Policy Paper #'. *A Case for Increased Taxation* by Dr Michael Keating, was the first policy paper printed under this series and discusses the need for a more balanced appreciation of the future needs for taxation in our society. The Academy was delighted by the exposure it received in the media, including articles or interviews in *The Age*, *Weekend Australian Financial Review*, *Sydney Morning Herald*, *Australian Financial Review*, and ABC Radio National (AM and Life Matters) programs.

The Committee also discussed the difficulties faced in translating social science research to government policy considerations, as well as communicating government policy needs to researchers. The Committee will explore opportunities to integrate researchers with policy makers that moves beyond a 'one-way' flow of policy papers. As a first step in addressing this foundation issue, the Committee commissioned Professor Meredith Edwards to write the second policy paper entitled *Social Science Research and Public Policy: Narrowing the Divide*. The paper examines key issues in communication between social science researchers and Government policy makers and makes practical recommendations to bring these communities into closer dialogue. The paper will be printed in August 2004.

In addition to exploring opportunities and encouraging policy outcomes from the Workshop and Research Programs, and the commissioning of policy papers for the *Occasional Paper Series*, opinion pieces have been printed in *Dialogue* that have important policy implications:

- *Dialogue*, 23, 1/2004: 'A critical appraisal of the new Higher Education Charges for Students', by Professor Bruce Chapman, examines the current HECS charges and suggests 'a preferred model'.
- *Dialogue*, 22, 2/2003 and 3/2003: In 2/2003, Professor David Throsby asks the question 'Does the Australian Government have a cultural policy?' In a companion article in 3/2003, Professor Glenn Withers examines 'Fundamentals of the ABC', considering the issues of commercial media, public broadcasting, Australian culture, and the implications for policy.

The PAC welcomes any suggestions and contributions to the program. Please contact Mark Pinoli (mpinoli@assa.edu.au) at the Secretariat for further information.



International Program

Hanoi Journey

A brief note headed 'Vietnam Exchange' in *Dialogue 22*, 3/2003 describes a visit by four ASSA Fellows – including immediate past and current Presidents Leon Mann and Sue Richardson – to the National Centre for the Social Sciences and Humanities in Vietnam (NCSSHV) in October 2003. The article is accompanied by a picture of the 'Delegation of Four' staring into the camera under the watchful gaze of Ho Chi Min, whose bust dominates the main NCSSHV meeting room.

The *Dialogue* article does not fully capture the achievements of a visit that was informative, stimulating and ultimately, rewarding, although at times frustrating. As is often the case with such exchange visits, the most enduring impacts flow from the sparks ignited when common interests are identified and perspectives shared. These visits provide a platform for subsequent collaboration and illustrate the value of the Academy's International Exchange Programs.



Our mission was to re-negotiate the existing ASSA/NCSSHV exchange agreement to better suit the needs of both parties. In the event, the goal was not achieved during the visit although much of the groundwork was laid and a range of opportunities for new partnerships identified. Our hosts, we felt, were somewhat disappointed that a new agreement was not signed while we were there, but we came away with an appreciation of how it could be made to work in ways that will be of mutual benefit. At

the heart of the thoughts that evolved during our visit was the idea that such exchanges are most valuable when they are focused around research partnerships based on specific projects. This is a simple idea, but one that takes time to implement – hence our reluctance to sign a new agreement prematurely.

I came back to Sydney with many wonderful memories of Hanoi, a vibrant city of contrasting and unexpected delights. The My Linh Hotel in Bui Thi Xuan Street was basic but had a certain anarchic charm, reminding me of Fawlty Towers with Manuel permanently in charge! Once on the street outside, one immediately plunged into a world of persistent but friendly hawkers, delightful street markets, chaotic traffic, and a teeming flow of humanity ranging from the very young to the very, very old – all going about their (often very physically demanding) tasks. Amid the typically Asian hustle that makes each crossing of the street a perilous adventure, Hanoi offers many quiet corners where one can enjoy the wonderful French colonial architecture under cover of the trees that provide that rare commodity in the intense early autumn heat - shade!

I particularly loved strolling around the Cathedral quarter, blending in with the (relatively few) tourists and locals, enjoying the ambience, far removed from the frenetic pace of the old town, yet only streets away from it. Café Malraux provided a relaxed ambience and decent coffee in a setting that brought back memories of the Left Bank – without any of the Parisian pomp and intensity, but with as much elegance and style. We enjoyed eating in many fine restaurants and everywhere there was marvellous (cheap) food and wonderful service – even for those unable to speak a word of the local dialect.



At our meeting with Ambassador Joe Thwaites at the Australian Embassy, we saw large crowds of potential university students who were attending briefing sessions on overseas study opportunities in Australia – a thriving export industry in operation. That meeting was followed days later by a reception for ASSA and NCSSHV at the

Ambassador's charming residence, where we met with other Australians working in Hanoi and were commended for our efforts in building links with Vietnam.

Our NCSSHV hosts organized a short trip to Halong Bay, where we enjoyed a relaxed boat trip on the bay. We sat on deck recounting other travel adventures (reassured by Able Seaperson Sue Richardson that the boat was properly skippered) as the sun set on a calm sea and a perfect evening. Before dinner, I set off with Leon Mann on our customary expedition to buy some tonic water to mix with the gin that our President had generously brought with him. When we tried this on a previous occasion in Hanoi, we attracted a large crowd of locals amused and bemused by Leon's (admittedly feeble) sketch of a lime to show what we were after. We eventually succeeded in our quest at a local hotel, although it was the first gin and tonic I have consumed in which the tonic cost more than the gin!

These pleasurable interludes were incidental to the Delegation's main activities. All four of us – Leon, Sue, Marcia Neave and I – gave a series of lectures and workshops at the Institutes that make up the NCSSHV. Sue gave seminars at the Institute of Economics, Marcia at the Institute of State and Law Studies, and Leon at the Institute of Psychology. I presented workshops at the Institute of Sociology, on welfare reform in Australia, poverty and exclusion, and ageing in China, each to an audience of around forty researchers and postgraduate students. By coincidence, the Director of the Institute, Dang Thi Viet Phoung and one of the senior researchers, Bui The Cuong, had attended a workshop on social policy I had organized in Chiang Mai in 1995, and we were able to renew those contacts and discuss future possible research collaboration. I also met Professor Nguyen An Lich from the University of the Humanities and Social Sciences, part of the National University of Vietnam, Hanoi and he told me of Vietnam's urgent need to improve its social work training and social policy research capability.

My links with Vietnam have been renewed since I returned to Sydney, and I have been invited back by Professor Lich to discuss ways in which Australian social scientists can contribute to social work training in Vietnam. I am exploring the possibility of conducting a comparative study of changing living standards and inequality in Vietnam and China (with the data for China being provided by Li Shi from the Chinese Academy of Social Sciences – a contact made during an earlier visit sponsored by the ASSA/CASS Exchange program). I hope to start work on this project during my visit to Hanoi in June 2004.

These are two examples of how last year's visit by the ASSA delegation has contributed to the goal of building valuable links between social scientists in Australia and Vietnam. I am confident that many more links will follow.

Peter Saunders, May 2004

Australia-Britain Special Joint Project Funding

ASSA, together with the Australian Academy of the Humanities and the British Academy, announced funding support in 2004-5 to *Dr Alison Bashford*, Department of History, University of Sydney and *Dr John Welshman*, Institute for Health Research, Lancaster University, UK, for their research project 'Health, "Race" and Migration: Tuberculosis Screening in Australia and Britain 1950-2000'.

The aim of the project is to explore the connected issues of health, 'race' and migration through a comparative analysis of the history of tuberculosis screening in Australia and Britain during this period. As part of this collaborative project the British research team visited Sydney and Canberra in July to coincide with the conference 'Medicine at the Border: The History, Culture and Politics of Global Health' held in Sydney 1-3 July. Dr Welshman is also scheduled to deliver papers to the Departments of History and Medical Humanities at the University of Sydney.

Australia-Netherlands Exchange Program

Professor Kees Jan van Garderen, Department of Quantitative Economics of the University of Amsterdam is currently visiting the University of Sydney and the University of Melbourne. In Sydney he will undertake joint research, mentor postgraduate students and present a research seminar. The joint research project will 'explore the possible application of copula theory to a range of problems in the classic simultaneous equation model with a view to deriving small sample distribution results that rely on marginal normality.'

In Melbourne he will visit *Dr Chris Skeels* in the Department of Economics and attend the Econometric Society Australasian Meeting (ESAM) held from 7-9 July.

Professor Pieter Muysken of the Department of Linguistics of the University of Nijmegen will visit Australia from 18 August to 12 September. He is one of the leading scholars on bilingualism, language contact and creole languages. His visit is being coordinated by *Professor Michael Clyne* at the University of Melbourne. A program has been organised to include visits to Monash University and the University of Sydney. While in Australia Professor Muysken will give a colloquium to staff and students in linguistics, deliver a public lecture and lecture to Sociolinguistics students at the University of Melbourne. He will also have discussions with those working on projects in the Research Unit for Multilingualism and Cross Cultural Communication and with a number of PhD students working on language contact topics. As well, he will deliver a research seminar to staff and students in linguistics at Monash University and interact with the team of researchers involved in a four year ARC Discovery Project 'Cross-linguistic study of endangered Maluku languages: Eastern Indonesia and the Dutch diaspora'. He will also be a guest lecturer in the Department of Linguistics at the University of Sydney for teaching staff and PhD students with research interests in bilingualism, including code-sharing.

Australia-China Exchange Program

A senior delegation from the Chinese Academy of Social Sciences visited Canberra on 2 April where they were hosted by the Academy Secretariat and Dr John Wong, representing the Academy's International Program Committee. The delegation attended a round table meeting at the Australian National University with representatives from the Human Resources Division and Centre for Educational Development and Academic Methods.

The Chinese delegation was particularly interested in learning about developments in the areas of personnel systems and management and systems of employment contracts, employee evaluation and training and retention programs for retaining talented people.

Dr John Wong, Reader in History, University of Sydney, visited China in April-May under the auspices of the Academy's Australia-China Exchange Program. Dr Wong is currently engaged in research on 'Sun Yatsen's Relations with the Powers'.

He had a very productive visit to China which he says, greatly exceeded his expectations. His busy schedule included meetings with Professor Jin Chongji, Keeper of the Chinese Communist Party Central Committee Archives and fruitful exchange of views on Mao Zedong, Zhou Enlai and Deng Xiaoping; Shen Zhihua, perhaps the greatest authority in China on the Korean War; the Foreign Affairs College (run by the Ministry of Foreign Affairs) to discuss China's foreign policy; discussions with the Director-General of the Legal Department, Office of the State Council, Hong Kong and Macao Affairs Office, about recent developments in Hong Kong; and with Professor Ye Zicheng, Head of the Department of Diplomacy in the School of International Studies at Beijing University and Professor Xia Chuntao who is a CASS expert on Taiping. He also had discussions on Chinese policies regarding Afghanistan, Iraq, Palestine and Israel, Africa, Indonesia, terrorism, separatism, Xinjiang and Tibet with Professor Pan Kuang of the Shanghai Academy of Social Sciences and with Fellows of the Institute of World Economics and Politics, on the European Union and APEC and the lessons for China. A seminar presentation on *How to Research, Write and Make History* was given in the History Department at Fudan University.

Dr Susan McGrath-Champ, Senior Lecturer, Work and Organisational Studies, University of Sydney, visited China from 12-21 June to meet with CASS academic staff, to undertake research on Australian expatriates in China, and to attend the inaugural conference on Chinese Management Research in Beijing which addressed the theme 'Mapping the Territory for Chinese Management Research'. Dr McGrath-Champ is engaged in research on the 'Effects of Expatriate Training on Market Entry Success of Australian Firms in China'. This study will provide a framework for Australian businesses to most effectively utilise training resources and develop strategies to succeed in China.

Dr Liu Fande, Associate Professor and General Secretary of the Centre for Australia Studies of the Chinese Academy of Social Sciences will visit the University of Technology, Sydney from 25 July to 9 August. Dr Liu will be based at the Key Research Centre in Communication and Culture: Transforming Cultures where he will research regional cooperative mechanisms in Australia and East Asia and discuss current research projects on Australian history and Australian approaches to regional relationships.

Closing dates for funded projects in 2005: Australia-Netherlands Exchange Program, 13 August 2004; Australia-Britain Special Joint Project Funding, 30 September 2004.



Reports from Workshops

Perspectives on Islam

Riaz Hassan and Mervyn Lewis

Background

The importance of Islam to Australia is obvious. Islam is numerically the second-largest religion in the world, with 1.2 billion followers (after Christianity's 2 billion), and has a strong presence in Asia. Indonesia, Australia's closest neighbour, is 88 per cent Muslim, and the non-Chinese inhabitants of Malaysia are predominantly Muslim. A number of other Southeast Asian countries have sizeable Muslim minorities among their populations. Over four hundred million, or one in every three, Muslims in the world live in South Asia. Globally there are 57 Muslim countries. There are sizeable numbers of Muslims in the West, 9 million in Europe, and over 6 million in the United States.

With the Muslim population of Australia in excess of 300,000, Islam is now an integral part of the Australian religious and social landscape. Yet Muslims face special difficulties in Australia as a result of the character of Australian society, which can best be described as hedonistic and based on 'secular rational' values, rather than 'traditional values' of religion and family. A social life revolving around alcohol and gambling creates a further divide. Another factor is the nature of the Muslim community itself. Muslims in Australia come from more than 70 different countries, with differences in ethnicity, culture and home language. Whilst there is a common bond of religion, the presence of diversity and variety within a tradition applies to Islam as well as to other civilisations. Islam is seen by many Australians as a monolithic religion, but the reality is that Islam is far from homogeneous and neither Islam itself, nor the diversity of views in the Islamic world, is well understood by most Australians.

The Workshop

The Academy of Social Sciences in Australia and the Division of Business and Enterprise, University of South Australia jointly sponsored this workshop, held at the University of South Australia 28-29 November 2003, to explore a variety of dimensions of Islam today with particular reference to Australia. A distinctive feature of the workshop was the number of disciplines represented amongst the nineteen participants: economics, education, finance, law, politics, religious studies and sociology. The program was developed and convened jointly by Professor Riaz Hassan (Flinders University of South Australia) and Professor Mervyn Lewis (University of South Australia). Both universities were represented in the opening addresses. Professor Ian Davey (Pro-Vice Chancellor, International and Research, University of South Australia) welcomed the participants to the University. Professor Anne Edwards (Vice-Chancellor, Flinders University of South Australia) opened the workshop on behalf of ASSA.

In broad terms, the first day of the workshop considered the breadth and diversity of the Islamic position on a number of issues, including the scope of Islamic law and developments in Islamic social and political thought. Diversity in Islam itself was examined in papers analysing Islam in South East Asia, governance in Muslim countries, Islamic social consciousness and the extent of commitment to religion. The second day investigated interactions between Islam and the West in the specific

context of Australia, highlighting the ethnic and social diversity of Australian Muslims and their distinctive contribution to Australian multiculturalism. Schooling and generational issues were examined, along with the status of women in Islam, perceptions of other Australians of Islam and the Muslim community, and attitudes by Muslims to Australia and to Western society generally. For each session, participants were provided in advance with a copy of the paper. Those giving papers were limited to a 10 minute summary. The discussion leader was allotted 15 minutes for comments, leaving 25 minutes for general discussion.

Islamic law and society

Islam commands authority over the totality of a Muslim's being, not accepting any distinction between the sacred and secular. Consequently, economics, politics, religious and social affairs all fall under the jurisdiction of the divine law of Islam – the *shari'a*. Based on *shari'a*, Islam has formulated a comprehensive ethic shaping all aspects of governance in society. In the first session of the workshop, Jamila Hussain (University of Technology, Sydney) outlined the provisions of Islamic law with respect to family law, marriage, divorce, custody, maintenance, adoption, wills and inheritance, commercial law and criminal law. In general, Islamic law places much emphasis on arbitrating or mediating disputes, with courts involved as a last resort when this process fails. Although Australian law has moved closer to Islamic law in this respect in certain areas such as family law, there are wide differences between the two in many other areas. Many of the new Muslim settlers in Australia have come from countries which have had no acquaintance with the idea of common law and most come from places where Islamic law applied to Muslims at least in the areas of family law and succession. Australian law authorities have made little headway in addressing this dissonance, which is compounded by a failure to provide interpreters with knowledge of the languages, dialects and legal processes. Legal provisions in Australia have been of only limited use in workplace discrimination and other exemplifications of the 'Islamophobia' which has arisen in the wake of the 11 September and Bali outrages. In his commentary on Jamila Hussain's paper, Professor Michael Humphrey (University of New South Wales) agreed that it is an open question whether existing laws are suited to the needs of a multicultural society and the protection of Muslim's rights, and argued that the current inquiry on human rights should be better publicised. In general terms, the main difference between Islamic and Australian law revolved around the issue of individual versus collective rights.

Political and social Issues

The two papers in this session examined aspects of international terrorism undertaken in the name of Islam and the consequences of the international war on terrorism. Professor Michael Humphrey (University of New South Wales) considered the impact of the war on terrorism on the Australian Muslim community, arguing that it has redefined the terms of membership in Australian multicultural society. Muslims settling in Australia saw it as a place to live a good Muslim life and responded to this identification with Australia with a high level of naturalisation. The take up of Australian citizenship by those born in the Middle East is 74 per cent, while amongst the Lebanese-born population it is 92 per cent. That social inclusiveness under multiculturalism has been replaced by one of distrust as doubts appear to be cast on all Muslims' integrity and loyalty as citizens. Despite official denials, it is all too apparent that Muslim individuals, families, communities and societies

both internationally and within Australia and other Western countries are targets of the war on terrorism. This re-shaping of the Muslim identity in Australia according to the precepts of global cultural politics is a recipe for alienation and division within the community that offers no social future except one of cultural separation along the lines of a clash of civilisations. In his commentary, Professor Mervyn Lewis (University of South Australia) observed that this cultural separation was in evidence in some Nordic countries where Muslim families had, through marriage, sustained or renewed links with the home country, and the lack of integration into the host country culture was causing concern. He argued that Australian 'multiculturalism' provided a different model for community relations than the 'integrationist' policy in France and the 'multi-racial' approach in the United States.

Dr Greg Barton (Deakin University) asked whether the largely secular, or at least non-sectarian, character of the Indonesian state has been hijacked in post-Soeharto Indonesia. He saw that there is a very real chance that Indonesia, the most populous Muslim country in the world, could go the way of Pakistan, the second most populous Muslim country, in which the agenda has been captured by radical Islamist parties and other revolutionary forces. On the other hand, Indonesia could continue to muddle through. The challenge for its neighbours, such as Australia, is to help ensure that Indonesia's democratic transition does not stall and fail, and that its economy does not stagnate. While there are grounds for optimism from Indonesia's past, at present developments do not look encouraging. In the ensuing discussion, Dr Julia Howell agreed that outside events and the crumbling state of the economy threatened political and economic stability, and in this respect Indonesia is an important reflection of Islamic issues across the world.

Islam and the world system

In his discussion of the 'clash of civilisations' (*Foreign Affairs*, 1993), Samuel Huntington suggested that the conflict between Western civilisation and other civilisations is a serious problem that surfaced in the late twentieth century and will worsen in the twenty-first. Although it may be a cliché to talk in these terms, without recognising the fundamental problems with the paradigm, Dr Sharam Akbarzadeh (Monash University) noted that Huntington's vision has struck a chord in the Muslim world which increasingly views the world system in a polarised and confrontational way. At the same time, it is becoming more difficult to identify countries where Muslim actors see their relations with the West as harmonious – even Turkey is uneasy about identifying themselves too closely with the United States. Dr Akbarzadeh argued that most Muslims can be depicted as spread along a conflict – integration continuum, with a significant concentration in the middle of that spectrum. Nevertheless, the movement recently has been towards the conflict end of the spectrum, with Muslim attitudes divided between those who see conflict as an historical product of past colonisation and those who see conflict as intrinsic to these relations, and co-existence between Islam and the West as impossible. Professor Riaz Hassan (Flinders University of South Australia) in discussing the paper, noted that matters are not helped by the rhetoric of war on terror, in which the metaphor of war is used continually, rather than focusing on criminal acts by certain individuals or groups.

Professor Amin Saikal (Australian National University) in his paper, considered that Westerners and Muslims are currently more fearful and distrustful of one another than at any time in contemporary history. Although there are those writers such as Bernard Lewis who attribute Muslim hostility to the West to a psyche shaped by the burden of historical decline and the failure of attempts at modernisation, more tangible factors

can be discerned in the failure to secure, or even advance, the resolution of the Israeli/Palestinian morass and the feeling that Muslims everywhere are under siege from policy and security measures under the war on terrorism. Despite official statements that the campaign against terror is not directed at Islam and Muslims *per se*, descriptions of Western civilisation as superior to that of Islam and depictions of Islam as a religion that inspires terrorism and produces terrorists continue to be replayed in the Western media, squeezing moderate Islamists of influence in the process of political and social transformation in the Islamic countries. In the general discussion led by Professor William Maley (Australian National University), it was recognised that the media plays a huge role, amplifying the psychological damage. There was also agreement with Professor Saikal's view that the US needs to play a more constructive role, sooner rather than later, in tackling the Palestinian problem, empowering the Iraqi people, rebuilding Afghanistan, and abandoning its support for unrepresentative, authoritarian regimes in the Middle East.

Identification in the Islamic world

Twenty or thirty years ago, some Muslim scholars worried that growing Westernisation and secular influences would erode the distinctive Islamic identities of Muslims. Professor Riaz Hassan (Flinders University of South Australia) finds a surprising resilience amongst Muslims he surveyed in Indonesia, Pakistan and Egypt. Indeed, in these countries a religious renaissance is taking place or has taken place. The evidence shows a robust religious commitment among Muslims from all walks of life. This commitment is characterised by a strong adherence to Islamic beliefs, rituals, religious devotion and experiential religiosity. Muslims share a common self-image of Islam, which is grounded by the traditions of scripturalism. Religion also plays an active role in everyday activities of large numbers of Muslims. In other words, religious commitment is characterised by Islamic theology and a pragmatic orientation which is applied in everyday life. Discussant for the paper, Father James Murray (*The Australian*), observed that a similar religious renaissance appeared to be taking place in many Western countries, and Christianity was growing in many African and other countries. Expanding religiosity was certainly not confined to Muslims, although they perhaps provided strongest evidence of the trend. The spiritual, political, sociological and other influences on this worldwide movement warranted closer study.

This discussion provided a valuable setting to the paper by Professor Clive Kessler (University of New South Wales) which, because of his ill-health, was summarised in his absence by the discussant, Dr Julia Howell (Griffith University). Professor Kessler, in a wide-ranging paper, argued that Muslims are increasingly trapped by the 'burden of history', unable to move forward or back. Muslims feel subordinated and humiliated, their sovereignty and honour confiscated by the historical reversal of fortunes, evidenced by the apparent triumph of Christendom in its modern incarnation over Islam and by the presence in the Middle East of a modern offshoot of Judaism, but in a very different power relationship. At the same time, the failure of attempts to establish nation states based on Islamic nationalism and modernising Islamic socialism has left the Muslim world falling even further behind economically. There is a fervent desire to re-establish the golden age of Islamic society of the Prophet and early caliphate without knowing how to actualise this historic, religiously-informed civilisational ideal. In this void, Islam itself has become for many Muslims almost an impassioned cult, and the focus of fierce loyalty and concern.

Islamic community in Australia

Professor Gary Bouma (Monash University) sketched a profile of the Australian Muslim Community. Muslims are found in every state and territory and most cities. The single largest country of birth is in fact Australia (36 per cent). Other important countries of birth are Lebanon, Turkey, Indonesia, Fiji, Egypt, India and Malaysia. Australian Muslims are more likely to be married and better educated than other Australians, but also more likely to be unemployed and have a lower income in comparison with the whole Australian population. Professor Bouma argued that his research confirmed that there is a sense of identity in the term 'Muslim' that transcends the ethnic diversity of the Muslim community based on national origins, rendering Muslims an ethnic group. His discussant, Professor Kazem Abhary (University of South Australia) strongly disagreed. Persian Muslims do not disregard their background in favour of religion, and consider themselves as Persians, and then as Muslims. While all Muslims are treated as a single ethnic group throughout Australia, diversity amongst the Islamic community is a fact, and management of this cultural and ethnic diversity is a vital matter. This issue provoked a considerable discussion amongst the participants. Dr Julia Howell (Griffith University) made the interesting observation that the identity of being Australian Muslim is more prominent now than 30 years ago, which is similar to the experience in Malaysia and many other countries.

Dr Irene Donohoue Clyne (University of Melbourne) in a paper on educating Muslims in Australia saw Islamic schools as having an important role in developing an Australian-Muslim identity free of competing ethnic loyalties, creating as the Director of one Islamic college put it 'good Muslims and good Australians'. Fears that the growth of such religious schools will contribute to a 'Balkanisation' in the Australian community seem as ill-founded as the belief in the 1960s that state funding for Catholic schools would have many of the same consequences. Despite concern expressed in 2003 by the Federal Minister of Education that Islamic schools may be encouraging 'anti-Christian and anti-Western sentiments', the schools must operate under stringent state government requirements and most have a deliberate policy to employ non-Muslims to expose students to a wide range of cultural backgrounds. In any case, only 10 per cent of school-age Muslim pupils attend Islamic schools (25 per cent in New South Wales). Her research indicates that Muslim parents feel that Australian schools ignore Islamic culture rather than being prejudiced against Muslims. On the other side, parents do not know enough about Australian schools.

Discussion of the paper focused on a range of issues relating to Islamic schools, in particular the quality of education (relatively poor except for the two largest), funding (government funds, fees from parents, some private endowments), those attending (mainly children of second generation parents in Australia), and the extent of parental involvement (often low). Not all of the Muslim children who do not go to Islamic schools attend state schools. As in the United States, many parents feel more comfortable sending their children to Catholic schools, which are welcoming to Muslims and do not try to convert the children to Christianity.

Gender Issues

In the non-Muslim community, Muslim women are perceived to be oppressed and dominated. By contrast, Muslims argue that Islam has elevated the status of women to a level unknown in other religious traditions. Dr Samina Yasmeen (University of Western Australia) argued in her paper on 'Status of Women in Islam' that these two

diametrically opposed opinions can only be reconciled by making a distinction between the *ideal/declared* status of women in Islam and the *actual* status of women in the Muslim world. Significant progress has in fact been made in the Middle East and South Asia in terms of the rate of female literacy, girls enrolled at primary and tertiary educational institutions, and women's economic activity ratio. Nevertheless, women in these countries are still less educated than men, participate less than men in the economic sphere, and are largely prevented from achieving leadership positions as administrators, managers and professionals by cultural norms dominated by notions of patriarchy. Invariably, the family is seen as the fundamental unit of society and the rights of both women and men are defined in these collectivist terms rather than as rights of individual people. Some secular feminists have challenged this ethos in terms of a universal human rights agenda in which 'women's rights are human rights'. Islam, for them, remains relevant as a personal choice, but individual human beings and their universal rights, irrespective of gender, race and religion, are placed at the centre of this approach. On the other hand, Islamic feminists accept the centrality of the family unit and the role of women as nurturers, and this gender-specific role determines the parameters within which Muslim women must operate. They look, as well, for political and cultural changes. But in this case it is to restore the rights that are already enshrined in Islamic teachings, but which have been compromised in Middle Eastern and South Asian societies by the failure to establish truly Islamic states and the continued existence of undemocratic and authoritarian regimes.

In the discussion it was noted that the wearing of the hijab had become almost the defining symbol shaping how the non-Muslim world viewed Muslim women. Dr Christine Asmar (University of Sydney) pointed out that Muslim women have a choice to wear the hijab or not to wear it, but those choosing to do so could operate freely in public whereas if they didn't wear it this freedom didn't exist, complicating the choice for the individual woman. Often women are forced into an either/or position by subtle influences such as how photographs can appear on a driver's licence and other official documents. She emphasised that there is a 'middle space'.

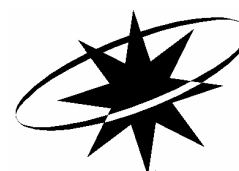
Dr Asmar also noted that Australian statistics show that the percentage of Muslim women attending university is higher than the percentage for women in the population in general. There is the potential for a global movement on the status of women in Islam as more Muslim women become active in education in the West. Professor Kazem Abhary (University of South Australia) saw the problem as one of a lack of understanding of Islam itself. Too often the body of knowledge about Islam is what men have interpreted it to be, and not what the Qu'ran actually says.

Contrasting cultures

The workshop ended with an open session on future scenarios, led by opening statements by Professor William Maley and Professor Amin Saikal. The discussion about Muslims and Islam in Australia and everywhere else in the West is more or less negative and focuses mainly on Islam's treatment of women, terrorism, negative aspects of Islamic law and how different Islam is from the West. But the vast majority of Muslims are peace-loving, ordinary members of society, devoted to observance of the six beliefs and five duties of their faith, while perhaps fearing the loss of their traditional social values in a modernising process. The essential nature of Islam has not changed, nevertheless some of the outward forms in which its principles are

applied remain bewildering to people from non-Muslim cultures, and this lack of understanding continues to shape perceptions of Islam.

The premise underlying the workshop was the importance of dialogue in understanding ethnic and religious differences, and using this knowledge as a basis for re-shaping attitudes in the community. However, this dialogue is too little in evidence in Australia today. One positive step would be in terms of changes to anti-discrimination legislation which at present addresses race, gender, age and so forth but not discrimination on the grounds of religion. Subsequent to the workshop, the Race Discrimination Commissioner has recommended such a change. Much more needs to be done also at other levels to tackle negative images in the media and public opinion generally. If someone is treated in a negative way, then they will start to act negatively. The process of education has to be two-way. Muslims themselves needed to be educated towards society at large, not just society being educated towards Muslims. Australia is not what it was 100 years ago, and it will continue to evolve as a human society. Islam is not only a heritage of Muslims, it is a heritage that belongs to humanity and needs to be valued as part of the human heritage. The workshop brought together a group of scholars committed to such an exploration.



Ethics and Auditing

Tom Campbell and Keith Houghton

The ASSA workshop on *Ethics and Auditing* was held on 1-3 December 2003. The workshop was jointly organised by the Centre for Applied Philosophy and Public Ethics (CAPPE, Australian National University /Charles Sturt University /University of Melbourne), and the Australian National Centre for Audit and Assurance Research (ANCAAR), ANU.

The object of the workshop (in which fifteen participated) was to examine the problems raised by recent accounting and auditing lapses through a study of the ethical, legal and accounting issues that arise in connection with auditing. Australian practice and theory were considered with a view to clarifying the function of the audit, the appropriate regulatory provisions, the accounting and ethical standards that ought to apply and suggested solutions to the current crisis in auditing confidence. Themes included independence of auditors, conflicts of interest, objectivity, self-regulation, auditing standards, enforcement of standards, ethical training, purposes of audits, ethical dilemmas of auditors, and financial reporting and disclosure. The legal background to these discussions focussed on the law reforms proposals currently under consideration, generally known as CLERP9.

Dr Simon Longstaff, Director, St James Ethics Centre, Sydney, spoke on 'The power of the auditor's opinion', pointing out that, in the final analysis, auditors offer nothing more substantial than their opinion, yet the power of that opinion profoundly affects the functioning of the world. He argued that the weight of a person's opinion is directly

related to their credibility which is, in turn, a function of their integrity (both real and perceived). Indeed, the most competent auditor in the world contributes nothing if his word is open to doubt. The audited accounts may be complete; they may offer a true and fair picture of a company's affairs. However, they will be little value unless confirmed in the opinion of a trusted auditor. In the wake of a series of scandals involving auditors, there has been a perceptible decline in the standing of auditors and a corresponding loss of trust in the published accounts of companies. Dr Longstaff proposed that auditors may need to adopt or accept a series of confidence building measures until such time as their credibility has been restored in the public mind.

Professor Tom Campbell, Manager of the Business and Professional Ethics Program of CAPPE, developed a philosophical exploration of a 'true and fair view' as it features in auditing discourse as an illustration of the thesis that ethics penetrates deeply into the practical issues that concern accountants and regulators. He suggested that there are some interesting ethical issues that arise in determining who constitutes the audiences to which audits ought to be addressed, that have some bearing on how the concept of a true and fair view should be interpreted as a basis for establishing auditing standards.

Professor Donald Stokes, and Ms Jane Hamilton, both from the University of Technology, Sydney, ('Markets, professional roles and the audit contract') described the institutional regulatory framework for auditing and its relationship to markets, corporations, and professional associations, arguing that auditing is demanded (*ex ante*) to reduce the expected residual economic loss resulting from attempts to protect individual property rights. Market participants have incentives to address higher than expected residual losses and regulators have an intervention role only to the extent that market participants fail to be effective in addressing these unexpected residual losses. They reviewed the fallacies in the market failure arguments used as rationales for regulatory intervention and suggested that the costs of regulation are underestimated because they focus on the entire residual loss rather than just the unexpected portion. The result is that regulatory intervention can increase future bonding and monitoring costs beyond what is optimal and thus can contribute to inefficient allocation of the costs of property rights, adversely affecting the conditions that would lead to audit market reform.

Professor Doreen McBarnet, University of Oxford, ('The implications of Enron') adopting a socio-legal approach, discussed the dangers of 'creative accounting'. She pointed out that, even without resort to fraud, Enron's performance figures would still have been distorted and huge liabilities hidden by its reliance on creative accounting techniques that constitute common corporate practice. This paper put Enron in wider context and explored its potential implications for accounting practice, accounting law and accounting ethics.

Professor Roger Simnett and Ms Alana Smith, both from the University of NSW ('The objectivity of auditing standards – the Australian experience'), discussed reform of Auditing Standard Setting through public oversight of the auditing standard-setting process. Such oversight has been proposed in Australia under CLERP9, and follows similar recent initiatives in Canada, the United Kingdom, and the United States, as well as being proposed for international auditing standards. The paper critiqued the recent Australian proposal, and compared the more market based versus authoritative approaches, as well as the tension that is created between the competing policies of

oversight of a national standard setting process and convergence with international auditing standards.

Professor Barry Cooper, RMIT, ('Corporate collapses in Australia and the role of accountants') introduced the theme of the 'religion of materialism' that developed during the 1990s and the consequent corporate and investor greed, which created the spiral that led to the demise of corporations such as HIH and OneTel. Compounding these developments in the corporate environment was the behaviour of the traditional gatekeepers, including accountants in particular, who betrayed the public trust. The accounting profession, he argued, is now paying the price, with increased government regulation and a credibility crisis that will take many years to resolve.

Dr Carolyn Windsor, Griffith University, ('Is the current regulatory system supportive of Auditor independence? The impact of management economic bargaining power on auditors.') pointed out that the current system of regulation requires auditors to depend directly on the auditee's client management for their economic survival. She presented the results of a study of auditors' ability to remain objective when psychologically pressured by client management economic bargaining power in hypothetical audit conflict scenarios. The scenarios tested hypotheses that auditors applied three hierarchical levels of complex decision-making to process judgements about independence. Auditors' moral reasoning and personal justice beliefs interact with management economic factors when making independence decisions. Auditors' first level of response is immediate and impressionistic to client economic factors: financial condition, size of fees and tendering process. Client economic factors interacted with auditors' second level cognitive moral development and third level subconscious beliefs in response to management demands, thus showing the difficulty for auditors to be free of personal beliefs and remain objective under intense pressure.

Dr Edward Spence, CAPPE ('Conflict of interest in the professions. Who pays the ferryman?') examined the nature and types of conflict of interest as they arise in the professions generally, and specifically, those that arise in the auditing profession, with reference to current case studies, particularly Enron. He explored how and to what extent conflicts of interest constitute or contribute to forms of corruption. If conflicts of interest are contributing factors in corruption and if auditors allow themselves to be caught in conflicts of interest then it can be said that auditors are themselves contributing to corruption, either through design or through negligence. Since auditors are, through their avowed professional role, defenders against institutional corrupt practices, their involvement in conflicts of interest that are conducive to corruption is professionally and ethically self-defeating and should be categorically avoided.

Associate Professor Christine Jubb, Department of Accounting and Finance, Monash University, ('Directors and auditors: an ethical relationship?') noted the existence of interlocking directorates, which arise when a director sits on more than one corporate board, which can create a situation in which directors are exposed to the auditors of each of these companies. She argued that these associations between directors and auditors may not be healthy if common director-auditor links arise frequently. This paper investigated the frequency of these links and the implications arising from them.

Professor Stephen Taylor, University of NSW, ('Non-audit services, auditor independence and accounting quality: a review of the evidence') argued that critics of the provision of non-audit services by audit firms have succeeded in effectively 'killing' much of this activity, at least as it relates to the provision of such services to audit

clients. He noted that many forms of non-audit services have either been banned outright, or effectively proscribed by regulatory and political agencies around the world and questioned the extent to which evidence exists of any actual threat to auditor independence (ie, independence 'in fact'). Focusing on evidence of a relation between the extent to which audit clients purchase non-audit services from their auditor, and the quality of accounting data, he concluded that provision of non-audit services to audit clients is not related to several different proxy measures for accounting quality, such as earnings management, conservatism and the likelihood of qualification by the auditor. Hence, it appears that the only justification for limiting, and even banning at least some forms of non-audit survives must be a threat to auditor independence 'in appearance'.

Professor Keith Houghton (ANCAAR) and Christine Jubb, Monash University ('Auditor independence: regulation, oversight and inspection') argued that transparency and oversight requires that: (i) auditors of certain classes of companies (in particular those that are publicly traded) be provided with incentives or requirements to have observable processes on independence; (ii) the means of observability be in the form of an inspection and review process focusing on issues critical to the audit such as independence; (iii) expert persons, not having a current or past financial interest the firm or in the commercial outcomes of the review, be used in this inspection; (iv) the inspection and review process have wide-ranging powers of inspection of the audit firms to examine policies, processes, structure and 'culture' of an audit firm; and (v) the report of the inspection and review be made publicly available, unedited and in full, and in a timely fashion.

Professor Philomena Leung, Deakin University, ('Ethics and the internal audit'), explored the increasing significance of the internal audit function in the current corporate governance reform, and discussed the ethical hazards faced by the internal auditor. To promote the awareness of the ethical hazards of internal audit, a conceptual model of ethical risks was developed to assess the internal and external ethical risks for the internal auditor, with recommendations of relevant safeguards. She identified the ethical risks with respect to outsourcing, a relatively common practice in Australia and overseas.

Professor Gary Monroe, Australian National University, ('Internal versus external whistle-blowing, organisational climate, and the power of the wrongdoer'), presented a study of three factors associated with auditors' propensity to whistle-blow: internal versus external whistle-blowing, rule-based or principle-based climate, and power of the wrongdoer. Internal whistle-blowing involves whistle-blowing within the organisation as compared with whistle-blowing to the media or other institutions external to the organisation. Rule-based organisational climates are those that reinforce the necessity to comply with rules and regulations while principle-based organisational climates are those that facilitate an auditor's ability to apply and adhere to general principles. They found that auditors are more likely to whistle-blow internally than externally and auditors are more likely to whistle-blow in the 'principle-based' treatment compared with auditors in the 'rule-based' treatment. In addition, auditors are more likely to whistle-blow on a less powerful wrongdoer rather than a more powerful wrongdoer, but only if the complaint recipient is within the organisation.

Ms Kay Plummer, Charles Sturt University, ('Are deep learning and ethical judgement related?') argued that without ethical practice the accounting profession is unable to

maintain its part in its contract with society. Prior research has identified education as a way of improving ethical judgement of individuals through a process of 'deep learning'. She reported the findings of a preliminary study that examines the relationship of ethical judgement skills of accounting students with their approaches to learning.

Mr Bryan Howieson, University of South Australia, ('Can ethics be taught to auditors and accountants?') sought to counter general cynicism and scepticism about whether ethics can be 'taught' to auditing and accounting students and practitioners by arguing that the ethical awareness of auditors can be raised by attacking certain widely held 'myths' about the nature and teaching of ethics. These myths including perceptions that ethics is a matter for individuals or personal taste and that the study of ethics must proceed from the basis of abstract ethical theory rather than practical experience. He emphasised that ethics is about power and power relationships and that developing the practical skills of values clarification, ethical decision-making, and ethical policy setting can raise the ethical awareness of students in auditing and accounting.

Extended discussions were undertaken of all the papers presented and further work is planned, with new contributors, to produce a book that will cover issues arising from auditing failures from a number of different viewpoints, in to light of the outcome of the CLERP9 proposals presently before Federal Parliament.



Working Mothers and Social Change

Patricia Grimshaw, John Murphy and Belinda Probert

In July 2003 Belinda Probert and John Murphy (RMIT) and Patricia Grimshaw (University of Melbourne) convened an Academy sponsored workshop on working mothers and social change. RMIT provided the administrative support, the venue and facilities, and together with the Australian Catholic University and the History Department of the University of Melbourne, contributed additional funding for overseas speakers.

The workshop brought together researchers working on the historical and contemporary patterns and dilemmas of motherhood and paid work in Australia. The diversity of areas from which participants came reflected the breadth of social and political arenas where the current debates are situated, as governments, community organisations and unions confront questions of work/family balance, maternity leave, child-care and gender relations. Research questions involved evaluating certain contradictions in public policy: incentives and disincentives for mothers to work, for example; and how single mothers who stay home to care for their children are reproached for their supposed welfare 'dependency'.

The workshop advanced academic enquiry by linking researchers across disciplines, who worked on themes such as: the historical patterns and trends of mothers' paid

work in Australia; the patterns of constraint and support for mothers who work; research on formal and informal child care, and on policy frameworks such as tax regimes, equal opportunity legislation, and statutory entitlements; the experiences of mothers in paid work, including the results of ARC Discovery projects being conducted by the convenors; and the changing place of mothers' paid work in the wider gender culture in Australia, such as social attitudes and discourses about these issues. Several participants placed these themes in international comparative contexts.

Participants included many of the principal researchers in Australia, several key scholars working outside Australia, a number of emerging early career researchers and people from government institutions including the Australian Institute of Family Studies. International keynote contributors were the British sociologist, Jane Millar, Professor of Social Policy at the University of Bath, and the New Zealand historian from the Victoria University of Wellington, Melanie Nolan. The former presented the results of her inquiry for the British government into provisions for including mothers in the workforce: 'Lone mothers as workers: restructuring welfare states?', and the latter compared policies, 'The state changing its mind? Australian and New Zealand governments' postwar policy on married women's employment'. From the government arena, Pru Goward spoke on the processes involved in attempting to gain acceptance of the Maternity Allowance. Academics Barbara Pocock spoke on 'The Market Meets Sacred Motherhood', Kerreen Reiger on midwives as mothers; Mark Peel on 'Mothers Who Work and Fathers Who Don't', Bettina Cass on national maternity and parental leave policies in Australia; and Peter McDonald on a proposal for the reform of family policy.

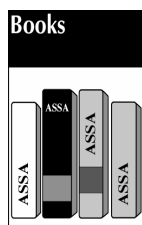
Other contributors covered historical aspects of the topic: historical patterns of mothers' work in the early 20th century (Shurlee Swain) and the interwar period (Joy Damousi); working mothers' access to child care provisions in World War Two and immediately afterwards (Ellen Warne); working mothers of the 1950s (Belinda Probert and John Murphy); and a comparison of two social surveys of working mothers undertaken in 1975 and 2000 (Renate Howe, Christina Cregan and Patricia Grimshaw).

Participants who served as chairs and commentators included Lyndall Ryan, Rosemary Frances, Sara Charlesworth, Ruth Fincher and Jenny Earle. All participants expressed the warmest appreciation for the valuable financial support and encouragement of the Academy of Social Sciences in Australia.

RMIT Publishing has agreed to publish the papers as a refereed on-line book, in conjunction with the Melbourne University History Monograph Series that will produce a hardback edition. The book is in an advanced stage of production, under the title *Working Mothers and Social Change in Australia*, edited by Patricia Grimshaw, John Murphy and Belinda Probert. The anticipated date of publication is November 2004.



Books



Litigation – Past and Present. Edited by Wilfrid Prest and Sharyn Roach Anleu. UNSW Press: 2004.

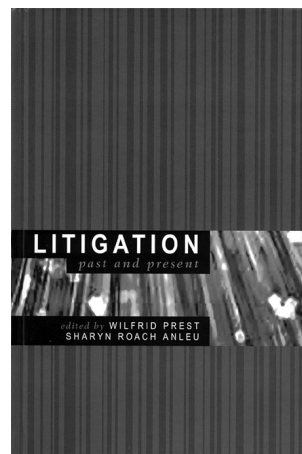
This book is a collection of essays that first saw light as papers delivered to a workshop of the Academy of the Social Sciences in Australia. The event took place in September 2001 at the University of Adelaide. The ten papers were presented to discerning participants who included a federal judge, legal academics from Australia, Britain and New Zealand as well as a sprinkling of political scientists, experts in Indigenous affairs and members of the Bar.

Published in 2004, the book reveals weaknesses inherent in the interval of three years between the preparation of the papers and publication as well as structural difficulties arising from the loose thematic links that bind the papers together. To use litigation as a common thread in a book mainly on legal topics is akin to using God as a link for essays on theology. Given the common law tradition within which the law operates in Australia, litigation refers to just about everything into which legal disputes are organised. It is certainly important, but as hinted in the closing chapter by Shirley Scott, on international law as a litigation strategy for Indigenous Australians, there are other - and often better - ways to bring conflict to a happy conclusion than to march off to court. Costs, delays and uncertainties always accompany the litigant. That is why litigation has rarely enjoyed a good press.

The motivating theme that runs through a number of the chapters of the book is that Australia is following the United States into a 'litigation crisis'. This thesis suggests that the courts are being overrun with trivial suits in which unmeritorious litigants recover outrageous awards. In so far as the book seeks to answer this favourite theme of editorialists, it performs a useful service.

The opening chapter on historical and contemporary dimensions of litigation, written by the editors, Sharyn Anleu and Wilfrid Prest, points out that litigation can sometimes empower the weak and the disadvantaged against the powerful. The writers refer specifically to judgments of final courts in Australia, Canada and New Zealand concerning claims by Indigenous peoples. I have a feeling that, if this chapter had been written with the case law handed down closer to the date of publication, the authors might not have been quite so sanguine. As Merkel J remarks, in a quotation appearing towards the close of the book, the native title litigation of Australia's Indigenous peoples always presented a 'danger of raising unrealistic expectations about what might be achieved by recourse to the law'. This comment, penned in 1999, has been reinforced by the trend of judicial decisions since. Where success has been reported in the press, it has often come about from negotiation between parties, who somehow have to live together, rather than through litigation and decisions imposed on those parties by judicial *fiat*.

The historical introduction is interesting, as revealing the way records of litigation were kept in England back to the thirteenth century, allowing the varying use of courts over



800 years to be assessed with a high degree of accuracy. In Australia, we have even more detailed and intensive statistics over a shorter interval. Amongst the many figures quoted is one concerning the proportion of lawyers per head of population. In the United States, in 2000, there was 1 lawyer for every 267 citizens. The figure in Australia was about 1 in 700. Obviously, rates of litigation vary with the availability of lawyers. But they also vary with the culture, ethical restraints and financial arrangements of the legal profession.

The introductory chapter cites what the authors describe as the 'growing body of recent High Court decisions which favour plaintiffs and expand the circumstances in which negligence could be held to have occurred'. In support of this diagnosis the authors quote the retirement speech of Justice Thomas of the Court of Appeal of Queensland who castigated the judiciary for having 'enjoyed playing Santa Claus forgetting that someone has to pay for our generosity'. However, if the book had been written in 2004, it would have caught up with the sharp turnaround in decisions of the High Court which now, predominantly, appear to favour defendants. This is a point frequently made elsewhere by Professor Harold Lunz. It shows the dangers inherent in any snapshot of litigation which, necessarily, is taken at a given time. Action creates reaction, in litigation as in just about everything else.

The real advantage of the historical material is that it shows that nothing much has changed over the past four centuries. New themes emerge reflecting new social values. The semi-chaotic process of litigation presents a useful adjustment to the large legal strokes made by Parliament in legislative statements of legal rights and duties, the adjustment of individual wealth and the allocation of liberty and restraint.

The chapter on a longitudinal study of civil litigation in England 1200-1996 by Professor Christopher Brooks of Durham University scotches the received wisdom that, to the end of the 17th century, the courts of England were used mainly by a social elite, in land disputes or other contests, to assert their power over the weak and vulnerable. Empirical data constantly challenges such stereotypes. Scrutiny of the actual records shows that 'all kinds of English people, ranging from wage-labourers and seamen to better off tradesmen and small farmers, regularly used legal instruments as a way of recording many life experiences from the cradle to the grave'. Debt recovery, in particular, has been a major element of the use of courts by all social classes over the centuries. Contingency fee arrangements were not invented in modern times. The graphical representation of trends in litigation over extended intervals shows ups and downs in going to court. As an insight into some of the factors that have influenced this particular form of participation in civil society, the analysis of English court records is fascinating.

So is the research of Christine Churches recorded in the third chapter on 'Some figures behind the numbers - Going to law in early-modern England'. This essay provides a pen picture of what it was like to go to court in the late 17th century. I once sat in the back of the courtroom of the Supreme Court of India. The milling throng, the ancient books, the fragile actors in the courtroom seemed a contemporary display worthy of Westminster Hall centuries ago. Of course, that may be how the contemporary High Court of Australia looks to this day to the uninitiated. Imagining the English courtroom in the time of the Stuarts is made easier by this study.

Continuing the historical theme, the fourth chapter by Professor Jeremy Finn, on litigation in the early years of the Canterbury settlement in New Zealand, analyses the

early records of the colonial courts in that country in a prosperous district where free settlers were seeking to re-create England in the South Seas, with only occasional interruptions by the Maori. As might be expected, much of the litigation concerned debt recovery. The records of the taxing of legal costs give a detailed insight into the daily work of lawyers engaged in litigation. As in England, so in New Zealand. The author concludes that 'the Supreme Court was used by almost every social class, although merchants and their clients were clearly the most frequent actors'.

The fifth chapter by Dr Hilary Golder, Professor Rosemary Hunter and Diane Kirkby offers a fascinating insight into 'When married women litigate'. For women, litigation was not generally possible until a legal status, separate from their husbands, was belatedly recognised. This and the late 19th century laws permitting divorce brought many women into Australian courts for the first time. In the federation year of 1901, for example, women petitioners seeking divorce outnumbered men by at least 2:1 in the eastern states of Australia. It was not always easy. To gain a divorce on the ground of habitual drunkenness, a wife had to prove that the defect had been aggravated by habitual failure to support the family. Men, on the other hand, had simply to show that a drunken wife had neglected her domestic duties. There are many insights into the patriarchal attitudes of the law, that long survived the federation year, in this fascinating analysis of court records concerning female litigation.

The sixth chapter by Professor Ted Wright and Dr Angela Melville tackles directly 'The metrics and politics of trends in civil litigation'. The authors quote various instances of political denunciation of avaricious lawyers and greedy litigants whilst observing that such claims 'are not necessarily founded in fact' or representative. Yet upon such stereotypes have been based many contemporary laws reducing severely the entitlement of injured persons to recover from those responsible a recompense roughly equivalent to their losses. Effectively, to bring down the cost of the green slip for compulsory motor insurance, judged necessary for political popularity, allocations for injuries damages have been significantly shifted. An increasing burden is now borne by the injured themselves, seemingly sacrificed on the false altar of the mythical God of excessive litigation. Perhaps the litigation was not excessive: simply a reflection of the failure of the legal system to deliver compensation to the injured in a more efficient manner.

Wright and Melville produce excellent graphical representations of the court filing rates in state and federal courts in New South Wales over the past decade. Contrary to the foundation of the demands of insurers for special protection, some of this statistical data appears to indicate that litigated court claims actually declined in the period when insurers were screaming most for relief. If the figures presented here are even partly accurate, they suggest the power of a well organised lobby, acting in concert with media hyperbole and political scare tactics. This chapter makes sombre reading for those who cling to the faith that democratic parliaments in Australia usually enact sensible and just outcomes in terms of social policy.

The seventh chapter on 'Litigation and the Federal civil justice system' is written by two experts in the best position to write such a review. Professor David Weisbrot is President of the Australian Law Reform Commission and Mr Ian Davis is a full-time Commissioner of that body. In July 2000 the Commission delivered its report *Managing Justice* that completed a four year inquiry into the federal civil justice system. Boringly enough, the Commission found that 'there was no "crisis" in the Australian federal civil justice system, notwithstanding a widely held perception that

such a crisis had arisen or was looming'. The careful recommendations of the Commission are described. The role of litigation in contributing to economic growth and social equity are well identified. The analysis of the work of the Federal Court of Australia and the emphasis on the importance of maintaining the recruitment of high quality decision-makers were features of the Commission's report. Once again, the importance of basing legislative and policy proposals on sound data is borne out by the research reviewed in this study.

Dean David Bamford of Flinders University contributes the eighth chapter on 'Litigation reform 1980-2000'. He too takes to task the 'perception of crisis'. Alas, the Australian and New Zealand Chief Justices contributed to this atmosphere by suggesting in 1996 that 'the system of administering justice is in crisis'. Whilst Bamford recognises systemic weaknesses, particularly when litigation is viewed in the context of global and local changes, he suggests that courts in Australia and other countries of the common law, have generally embarked on the right path. In his view, this has involved more intensive case management, the reduction of court involvement in most outcomes, the use of mediators, conciliators, arbitrators and other functionaries and stricter monitoring of the conduct of litigants. Of course, there is a danger in turning the business of courts over to efficiency experts. Under the Australian Constitution, courts cannot forfeit their duty to act justly and lawfully. This point was reinforced by the decision of the High Court of Australia in *Queensland v JL Holdings Ltd* (1997) 189 CLR 146. I get the impression that Dean Bamford thinks that the judges who unanimously favoured that outcome constitute something of an obstacle to efficient court reforms. But I, for one, am unrepentant. Please do not complain to me that courts are there to do justice. Within the law, that is precisely their role.

Nevertheless, this chapter makes the important point that the adversarial system adds a significant cost to litigation. It puts those who cannot afford lawyers at a terrible disadvantage before the courts. How we solve this problem, consistently with the assumptions of the judiciary created by the Australian Constitution, is a major challenge for the future. If there is a 'crisis' in litigation in Australia, this is it.

Professor Larissa Behrendt contributes the ninth chapter on 'Challenging the status quo'. It is an examination of the pursuit of Indigenous rights through litigation before the Australian courts during the hundred years before the decision in *Mabo* in 1992. The author contrasts the development of the fiduciary concept, in relation to the Crown's obligations to Indigenous peoples in Canada and the judicial disinclination to embrace a similar idea in the Australian context. I suspect that we have not seen the last of this topic. However, it will probably need another generation of judges before the Australian courts embrace a larger notion of fiduciary duties that will encourage Indigenous peoples to come again knocking on the doors of the courts, seeking rights based on a fresh approach.

The final chapter by Shirley Scott also takes as its starting point the *Mabo* decision. Then, after the rekindled hope of the *Wik* case in 1996, it examines decisions since then, made by courts and Parliament alike. On the whole, they have disappointed Aboriginal claimants. The failure of the court claim in respect of the 'stolen children' and the parliamentary fate of the report of the Human Rights and Equal Opportunity Commission *Bringing Them Home* finishes this book on a sombre note.

Litigation such as *Mabo* and *Wik* seemed to promise Indigenous Australia great hope from the decisions of the Australian courts. Yet nowadays the courts feel more constrained by the legislation enacted in the wake of those decisions. The tide appears to be in retreat somewhat. Some litigation has shifted offshore - to United Nations bodies in Geneva and New York.

The last words in this book contend that, in the years since *Mabo*, 'far more has changed in our imaginations than on the ground'. This conclusion does not erase the historic gains which *Mabo* and *Wik* secured. Once those decisions were given, the caravan of the law moved on. Few in Australia would want to go back to the legal doctrine that preceded *Mabo* and *Wik*. Yet, as so often happens in litigation, when the law leaps boldly forward in a judicial decision, it then takes fright. Startled, it looks about and stands still for a time, mesmerised by the unseemly haste of its last leap forward - awaiting the moment for its next move.

Some readers will feel that the theme of litigation is insufficient to connect chapters with such intensive descriptions of English and New Zealand social history. Some will regret the lack of a good chapter on Canadian and United States trends. The essays on Indigenous claims seem a little sadly tacked onto the end of the book. It is as if everyone recognised the importance of the issue and wanted to give it due attention. Those chapters portray not the weakness of litigation as a mechanism so much as the errors of substantive law that the litigation brought to light. The same might be said of the experience of women in litigation. So doubtless it could be said of litigation on behalf of aliens, gays, people with disabilities and other minorities. Perhaps that function does a service in the dialogue of democratic countries.

As a collection, the book is thought provoking. But I put it down without the conviction that the thread of litigation adequately performs its assigned unifying role.

There are the usual typographicals. 'Senior counsel' is misspelt (p 145) in the predictable way. The index is good (a necessary feature of a collection of essays). However, it wrongly describes RP Meagher as 'Rodney'. It is Roderick. The book is nicely printed by UNSW Press. Clearly, some of the chapters have been updated - so far as I could see to 2002. The most important point made by the book is that the 'crisis' in litigation, portrayed in the media, is mainly a chimera. Yet there remains a 'crisis' of sorts as every judge will attest who sits in an Australian court and witnesses the increasing army of self-represented litigants struggling with our ungainly system. Perhaps it is that 'crisis' that deserves a second workshop sponsored by the Academy of the Social Sciences. If that happens, the book of its papers must be produced more promptly. If the book is to sell, it must have a strong common theme. Desirably, it should conclude with an overview offering lessons derived from an analysis from the papers and some recommendations for action to translate the bright insights of the social sciences into an agenda for our representative democracy.

Michael Kirby



Opinion

Science, Suicide and the Self

Richard Eckersley

The 14th Century English philosopher (and heretic), William of Occam, stated in his famous razor that 'entities must not be unnecessarily multiplied'. Roughly translated, this means 'the simplest theory that fits the facts corresponds most closely to reality'.

I used to like this idea. Now, having examined a huge amount of research evidence in trying to work out if life is getting better or worse, I'm not so sure. When dealing with complex systems like human societies, comprising many entities that often interact in multiple, weak, diffuse and non-linear ways. I've learned that we have to 'multiply entities' beyond what seems at first to be necessary.

Take the case of youth suicide, which has risen in Australia and most other developed nations over the past fifty or so years.¹ It has been a specific interest of mine. A colleague Keith Dear and I recently analysed youth suicide rates across rich countries and found a strong positive correlation between male rates and several measures of individualism.² Correlations between female rates and individualism were also positive but weaker. In other words, youth suicide rates were highest in the most individualistic countries; the more personal freedom and control over their lives young people felt they had, for example, the higher the suicide rate. Male youth suicide was also positively associated with subjective measures of health, optimism and trust, while individualism was positively associated with both these and other quality-of-life variables, including happiness and life satisfaction.

Now, the simplest explanation of the association between suicide and individualism is that the greater the sense of freedom in life, the more likely people are to choose death. Indeed, suicide might well be regarded as an ultimate expression of individual freedom of choice and control over one's life. But the results suggest there is more to our findings. They present an internally consistent pattern that raises intriguing questions.

On the face of it, they indicate that higher youth suicide is associated with not just freer youth, but happier, healthier, and more optimistic youth, so suggesting that youth suicide rises as social conditions and personal prospects improve. Or is there another explanation, linking higher suicide with greater social adversity, which seems intuitively more likely? Put another way, are the suicidal 'an island of misery in an ocean of happiness', or 'the tip of an iceberg of suffering'? Other studies appear to support the 'island of misery' argument, and researchers have offered three possible explanations: first, as life improves, people have fewer outside sources to which to attribute their unhappiness so are more likely to blame themselves; second, the greater happiness of most increases the misery of the few; and third, that something like increasing freedom is good for the majority but bad for a minority which can't handle it.

These explanations certainly fit the 'facts' of this research, but there are two principal reasons for challenging the 'island of misery' interpretation. The first is that the association of higher suicide rates with higher quality of life may result from cultural differences between countries in how people respond to questions about life. It is possible, for example, that compared with collectivist societies, people in individualistic societies rate their wellbeing higher because it is more important to consider themselves happy, health and optimistic - in other words, to be a winner.

The second reason is that the 'island of misery' hypothesis can hold true only if the evidence shows that the suicidal are indeed part of a small, distinct minority within a population of young people who are thriving and whose wellbeing has improved over recent decades. But the evidence does not do this. Instead, the facts, when we cast the net of evidence much wider, support the 'tip of the iceberg' hypothesis. They show that rising suicide rates represent one end of a spectrum or gradient of distress and suffering. Such distress and suffering, in less severe forms, affects a much larger proportion of young people and has also become more prevalent over time.

Broadly speaking, between one fifth and one third of young people today are experiencing significant psychological distress and disturbance at any one time (for example, depression, anxiety, substance abuse, serious suicidal thoughts and behaviour). Taking a still wider measure, malaise (measured as headaches, stomach aches, insomnia and tiredness), the proportion experiencing high levels of malaise can rise to one half (depending on country, age, gender or other factors).

The 'tip of the iceberg' hypothesis is consistent – while the 'island of misery' hypothesis is not – with the observation of the British epidemiologist Geoffrey Rose that diseases or disorders and their causes are rarely binary – people have them or they don't. Rather, they are distributed along a continuum - how much does a person have?³ As he demonstrated, there is a relation between the mean of a characteristic in a population and the prevalence of 'deviance'. Rose even uses the 'iceberg' metaphor to describe this relationship, making specific reference to mental illness: 'The visible part of the iceberg (prevalence) is a function of its total mass (the population average)'.

Rose also observed that the causes of individual differences in disease or disorder – for example, why one person and not another commits suicide - may be different from the causes of differences between populations, that is, those that explain patterns and trends in suicide rates. In other words, causes of cases may differ from causes of incidence. For example, it may be, as other research suggests, that individuals with a high sense of freedom of choice and control over their lives are less likely to be suicidal. But at the population or societal level this individualistic orientation may reduce social cohesion and support, leading to more personal isolation and alienation, and so to higher suicide rates.

Another possibility, however, is that the indicators of individualism that Dear and I used in our analysis, including the perception of freedom of choice and control over life, are measuring not real autonomy or control but independence or separateness, which is not the same thing, and may even reduce personal control. This brings our population-level findings into line with the individual-level results. It sounds hard to believe. After all, isn't this just what individualism is intended to do: free us to live the lives we want? But it makes sense - especially in unstable, uncertain times - that the lack of clear cultural frames of reference that characterises highly individualistic

societies does reduce people's sense of control over their lives. Let me explore this proposition in more detail.

Some psychologists have observed that, in discussing individualism and related issues, many researchers confuse autonomy, which is good for wellbeing, with independence, which is bad.⁴ Autonomy is a matter of volition, the ability to act according to our internalised values and desires. Its opposite is not dependence, but heteronomy, where we feel our actions are controlled by external forces regardless of our own values and interests.

It follows from this, I think, that a fundamental flaw in modern, individualistic, Western culture is that it, too, confuses autonomy with independence, or separateness, affecting other qualities important to wellbeing such as relatedness or belonging - and, ultimately, autonomy itself. In other words, autonomy is culturally expressed as independence. The Macquarie Dictionary, for example, defines autonomy as 'independence, self-sufficiency, self-regulation'.

This is a bold move. Other societies, past and present, have made a point of binding the individual to society. The French sociologist Emile Durkheim observed in his seminal study of suicide over a century ago that a crucial function of social institutions such as the family and religion was to keep 'a firmer grip' on individuals and to draw them out of their 'state of moral isolation'.⁵ 'Man cannot become attached to higher aims and submit to a rule if he sees nothing above him to which he belongs', Durkheim wrote. 'To free him from all social pressure is to abandon him to himself and demoralise him.'

Interpreting autonomy as independence might 'work' up to a point, but beyond this point individualism could well lead to less autonomy, not more, because there is less perceived congruence or connection between the self and others, between our values and theirs. The more narrowly and separately the self is defined, the greater the likelihood that the social forces acting on us are experienced as external and alien. This could be a major dynamic in modern life, impacting on everything from citizenship and social trust, cohesion and engagement, to the intimacy of friendships and the quality of family life.

There is also another way that individualism could have this effect. The independent self requires high self-esteem to function, and psychologists have noted that a lack of control can be part of a defensive strategy to maintain self-esteem.⁶ In other words, one way to prop up our self-esteem is to believe that the things that threaten it are beyond our control.

To summarise we have two possible, and related, mechanisms by which increased individualism might reduce our control over life: first, it encourages a perception that we are separate from others and the environment in which we live, and so from the very things that influence our lives; and, secondly, independent individuals require high self-esteem, which diminished control helps to maintain.

We can glimpse in these psychological changes how individualism came to represent, not authentic autonomy, but self-centredness: the satisfaction of personal wants, a pre-occupation with entitlements, an abrogation of responsibilities and a withering of collective effort. Broadly speaking, it would seem that increasing individualism has created a 'separate' self: socially and historically disconnected, discontented, insecure; pursuing constant gratification and external affirmation; prone to addiction, obsession and excess. We observe all these things in modern Western societies.

These cultural effects are subtle and complex. In a culture that promotes personal freedom, we will seek this freedom and feel better when we have it – yet also sense that something is missing. We can strive for independence and, at the same time, crave belonging and intimacy. We can be lonely in company or in relationships; out of regard for ‘privacy’ – our own and others’ – we may fail to seek support when we need it, or hesitate to offer it to others when we should.

We confront the paradox that the more we make the individual the focus of our culture, the more impotent and insecure we feel; and the more diminished we feel as individuals the more precious we become in the face of slights and insults and the more stridently we defend our personal ‘rights’ – to happiness, a risk-free life, compensation for the wrongs that befall us.

In shaping the self in these – and perhaps other – ways, individualism appears to be acting in synergy with another defining quality of our culture: materialism, the pursuit of money and possessions (commonly expressed through consumerism). Research that shows that materialism breeds, not happiness, but dissatisfaction, depression, anxiety, anger, isolation and alienation.⁷ People for whom ‘extrinsic goals’ such as fame, fortune and glamour are a priority in life tend to experience more anxiety and depression and lower overall wellbeing than people oriented towards ‘intrinsic goals’ of close relationships, self-understanding and acceptance, and contributing to the community. We see this in the lives of Hollywood-style celebrities, icons of the excess whose glamour, fame and wealth so often mask deep insecurities, addictions and self-absorption.

As consumerism reaches increasingly beyond the acquisition of things to the enhancement of the person, the goal of marketing becomes not only to make us dissatisfied with what we have, but also with whom we are. As it seeks ever more ways to colonise our consciousness, consumerism both fosters and exploits the restless, insatiable expectation that there’s got to be more to life. In short, the more materialistic we are, the poorer our quality of life. (There is another version of Occam’s Razor that we might well apply to our consumer lifestyles: ‘It is vain to do with more what can be done with less.’)

I want to emphasise that I am not talking about a deviation from the one way of life that optimises wellbeing. How we seek and find happiness depends on our culture; there may be many paths we can follow in meeting human psychological needs. This is the source of our extraordinary diversity and versatility, but it is also a source of danger: we can lose the path altogether, run off the rails.

Cultures bring order and meaning to our lives. Of all species, we alone require a culture to make life worth living, to give us a sense of purpose, identity and belonging – personally, socially and spiritually – and a framework of values to guide our actions. Some cultures do this well, others poorly. One of the most important and growing costs of our modern way of life is ‘cultural fraud’: the promotion of cultural images and ideals that serve the economy but do not meet human psychological needs, nor reflect social realities.

While the costs of cultural fraud are not yet obvious in aggregate measures of population health and happiness, I have argued that they are revealed in the trends in young people’s psychosocial wellbeing. They are also apparent in surveys of public perceptions of life today, which reveal widespread disquiet about social trends and developments. And when we look at the causes and correlates of wellbeing, the evidence is also compelling that focusing, as we do, on the material and the individual

- and especially on both together - reduces social cohesion, confidence, trust and stability, and leaves us personally more isolated and vulnerable; it produces an existential emptiness that distresses and disturbs us – and, in extreme cases, can drive us to suicide.

Our political and business leadership continues to try to convince us that 'go for growth' strategies based on a philosophy of material self-interest are the key to a better world. Perceiving that this approach isn't working and frustrated by the blinkered political response, many people are disengaging from a wider participation in national affairs and focusing on their own lives and welfare. And they may be happier for it; it is an effective coping strategy – at the individual level.

At the same time, however, there is growing evidence that a cultural upheaval is taking place, a profound reorientation in attitudes as people become more aware of the problems our present course is creating, at both a personal and global level. Many of us are uncomfortably aware of the gap between our values and lifestyles, between what we believe and how we live; more of us are exploring ways to close that gap and to live lives that express our values more clearly. We are trying to be more genuinely autonomous.

The old way of life still dominates, but as our cultural excesses grow ever greater and more destructive, more people are discarding what they sense is an obsolete world view and are searching for a new one. Surveys suggest about a quarter to a third of people in Western nations are making this leap of faith. We can label this paradigm shift as one between the dominant 'idea' of material progress, which gives priority to economic growth and a rising standard of living - and sustainable development, which seeks a better balance between economic, social and environmental objectives to create a high, equitable and lasting quality of life.

We can also characterise the change as replacing the outdated industrial metaphor of progress as a pipeline – pump more wealth in one end and more welfare flows out the other - with an ecological metaphor of progress as an evolving ecosystem such as a rainforest – reflecting the reality that the processes that drive social systems are complex, dynamic, diffuse and non-linear.

When I ask very different, but mostly well-educated, professional or student audiences about how they line up on this issue, the proportions choosing sustainable development over material progress usually range from a large minority to a substantial majority (in one audience, the vote was unanimous). People are relieved that these big issues are being examined and discussed, so affirming their own deep doubts about society's direction. Many feel isolated because they don't see these doubts echoed in the mainstream media and in political debate

Driving this shift in world views is the possible emergence of a new moral autonomy. One of the most exciting ideas to emerge from recent postmodern scholarship is that we have the opportunity, however small, of becoming truly moral beings, perhaps for the first time in history. That is, we have, each of us, the opportunity to exercise genuine moral choice and to take responsibility for the consequences of those choices, rather than accepting moral edicts based on some grand, universal creed and handed down from on high by its apostles.

British sociologist Zygmunt Bauman writes: 'The denizens of the postmodern era are, so to speak, forced to stand face-to-face with their moral autonomy, and so also with their moral responsibility. This is the cause of moral agony. This is also the chance the

moral selves never confronted before'.⁸ This seems close to what theologians call the doctrine of 'primacy of conscience'. It presents us with an immense challenge, and it may well be asking too much of us. But the ideal is there, if often hidden, in both religious teaching and science.

Linked to this new moral autonomy is the emergence of a new kind of more socially responsible and engaged individualism. Action is still a form of self-expression, but it is framed and shaped by a wider social context. These new orientations create 'something like a cooperative or altruistic individualism,' say German sociologists Ulrich Beck and Elizabeth Beck-Gernsheim.⁹ 'Thinking of oneself and living for others at the same time, once considered a contradiction in terms, is revealed as an internal, substantive connection. Living alone means living socially.'

The many paradoxes and contradictions we encounter when we examine 'the big picture' of human life today reflect not just its inherent complexity and our incomplete understanding of it, but also parallel processes of cultural decay and renewal, a titanic struggle as old ways of thinking about ourselves fail, and new ways of being human strive for definition and acceptance.

So hope for the future rests on several crucial developments: a potent synergy between scientific and spiritual understandings of the world and life; our unprecedented potential as individuals to make our own moral choices and to accept responsibility for these choices; and the evidence that the necessary cultural changes are already taking place.

This, then, is the social story behind youth suicide. We've come a fair distance from suicide in trying to explain it. The facts fit, but the explanation isn't so simple. Understanding why young people choose to kill themselves means going well beyond the dominant psychiatric view that suicide is caused by depression, so managing suicide is a matter of better identifying and treating the depressed. It means getting a truer picture of life for young people today, which means examining both the social breadths and psychic depths of our lives, and understanding the relationships between them.

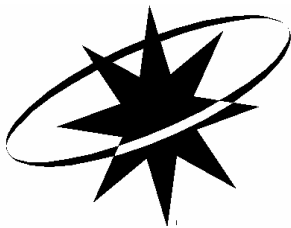
In doing this, I suspect we are pressing against the limits of science's capacity to discern and define patterns of cause and effect. Synthesis – integrating knowledge not just from a range of research fields, or even disciplines, but from across the natural and social sciences and humanities – allows us to enhance that research capacity, to improve its power of resolution.

I wonder what William of Occam would make of it all?



Richard Eckersley is a fellow at the National Centre for Epidemiology and Population Health at the Australian National University. This paper draws on his book, *Well & Good: How We Feel and Why It Matters*, (2004, Text). A shorter version of this article was broadcast on ABC Radio National's *Occam's Razor* program on 30 May.

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- ¹ Youth suicide rates are now falling in those countries that have seen the biggest increases, including Australia. But this doesn't necessarily weaken the broader social associations argued in this paper; hospitalisations of young people for intentional self-harm and emotional and behavioural problems have increased in Australia over the period suicide rates have fallen, suggesting more troubled youth are getting help, not that fewer need help.
- ² Eckersley, Richard & Dear, Keith (2002). 'Cultural correlates of youth suicide'. *Social Science & Medicine*, 55, 1891-1904.
- ³ Rose, Geoffrey (1992). *The Strategy of Preventive Medicine*. Oxford University Press: Oxford (quotation from 72).
- ⁴ Chirkov, Valerie, Ryan, Richard, Kim, Youngmee & Kaplan, Ulas (2003). 'Differentiating autonomy from individualism and independence: a self-determination theory perspective on internalization of cultural orientations and wellbeing', *Journal of Personality and Social Psychology*, 84: 97-110.
- ⁵ Durkheim, Emile (1897). *Suicide: A Study in Sociology*. Routledge and Kegan Paul: London, 1970: 361-92 (quotation from 389).
- ⁶ Twenge, Jean, Zhang, Liqing & Im, Charles (2004). 'It's beyond my control: a cross-temporal meta-analysis of increasing externality in locus of control, 1960-2002'. *Personality and Social Psychology Review*. 8, 3: 308-319.
- ⁷ Kasser, Tim (2002). *The High Price of Materialism*. MIT Press: Cambridge, Massachusetts.
- ⁸ Bauman, Zygmunt (1995). *Life in Fragments: Essays in Postmodern Morality*. Blackwell: Oxford: 10-43, 256-88 (quotation from 43).
- ⁹ Beck, Ulrich & Beck-Gernsheim, Elizabeth (2002). *Individualization*. Sage: London: 162.



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