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**T**he 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 annual meetings of the Academy, held from 7-9 November, went well in all respects. Following a half day meeting of the Executive, the usual Fellows' Colloquium was held on Sunday evening.

The Sunday Colloquium was initiated a number of years ago to provide an informal forum for Fellows who had arrived from their home institutions around Australia to attend the Annual Symposium the following day, and any interested Canberra-based Fellows. It is always a most engaging event. Its success lies in its ability to gather a modest number of Fellows (around 30-40), from many of the disciplines included in the Academy's ambit, for lively dialogue around some interesting and controversial topic. One or more people prepare a short presentation in advance, and from there, discussion flows freely, drawing on the extensive range of experience, insight and knowledge that the assembled Fellows possess. This year, Hal Kendig led a discussion on ageing. Hal is to head up the new Australian Research Council/National Health and Medical Research Council *Network on Ageing Well*. He was assisted by Mary Luszcz and myself, since both of us have active roles in the new *Network*. The topic, Hal's provocative questions and some challenging tidbits of information stimulated a vibrant discussion.



The Annual Symposium, on the role of government in managing risk, was held on Monday, at the Academy of Science Shine Dome. About 80 people attended an illuminating and creative discussion of the types of risks with which government can assist people. John Quiggin gave a clear, systematic and succinct review - starting with the 16<sup>th</sup> century - of this complex issue and laid the foundation for the rest of the day's program. Bruce Chapman, author of the Higher Education Contribution Scheme (HECS) introduced the idea behind the basis of that Scheme, the income related loan (IRL). The Symposium explored the many other situations where an IRL could be applied creatively to form a type of partnership between government and individuals to share economic risks. Examples included the provision of drought assistance to farmers; provision of scholarships and other support to elite athletes; provision of income support for those who are temporarily at risk of bank foreclosure on their mortgage; as a mechanism to recover small fines; or as a means to manage large health costs. As is clear just from this list, the Symposium presented a range of imaginative and innovative ideas on how to use the basic principle of a loan that has repayments tied to levels of future income, to assist people to deal with episodes of low income and/or high need. The program concluded with a panel of discussants who took a more sceptical view of the potential of the income related loan, principally on the grounds that it excused governments from responsibility for managing the level of risk that people faced. John Quiggin then provided a thoughtful summation.

Bruce Chapman, with considerable assistance from the Secretariat, arranged the program, as well as making his own contribution on the day. He did a wonderful job and all those I spoke to found the program to be stimulating and full of creative ideas. It is regrettable that it did not attract more policy makers (despite being widely

advertised), for it was breaking new ground in thinking about innovative instruments for promoting the public good. I would like to thank both Bruce and all the staff of the Secretariat, who ensured that the whole program ran faultlessly.

After a break for informal discussion and drinks, we gathered again for the Cunningham Lecture. This major event in the annual calendar of the Academy was presented by Fellow Geoff Brennan - economist, social theorist, singer of renown - from the Australian National University. Geoff gave an eloquent, beautifully crafted case for appreciating the importance of esteem as a basis for human motivation. He examined the ways in which this motivation could be harnessed, drawing an analogy with Adam Smith's concept of the invisible hand, to lead people to take actions in seeking esteem that have as a by product the promotion of the public good. The Lecture was followed by a most lively discussion. As is usual, the Lecture will be published by the Academy.

The Annual Dinner was a well-attended gathering that followed the Symposium and Cunningham Lecture. I was pleased to welcome the Presidents of two sister Academies - Iain McCalman from the Australian Academy of Humanities and John Zillman from the Academy of Technological Sciences and Engineering. An important part of the evening's formalities was to welcome the newly elected Fellows and to present them with their Testamurs.

As is becoming customary, the new Fellows were invited to a breakfast at the Academy on the following morning, hosted by myself and John Beaton. The main purpose of this breakfast is to brief new Fellows on the origins and workings of the Academy, introduce them to the staff of the Secretariat, and indicate ways in which they can contribute to the life of the Academy should they wish to do so. A number told me after the Annual General Meeting that they had felt most warmly welcomed by the Academy and its Fellows and had thoroughly enjoyed their first experience of its annual meetings.

Panel meetings preceded the Annual General Meeting. As usual, we did not have a quorum at the AGM, and the meeting agreed to proceed as if we did, and to circulate the minutes of the meeting to all Fellows to have any resolutions endorsed. The meeting adopted the *Annual Report*, including the financial accounts. Our finances are satisfactory. We have budgeted for a small surplus for 2004-05 and have about \$250,000 in reserves.

The meeting discussed at some length whether the Academy should make a statement about the nature of universities in response to press reports that the Minister for Education (Brendan Nelson) was contemplating increasing the gradations among universities, including the possibility of teaching-only institutions. After a most fruitful exchange, the meeting endorsed the following statement:

The Academy affirms the importance of research, and teaching informed by research, as defining features of a university. It believes that all academics must have the opportunity to pursue research, and urges governments and universities to sustain this essential link between the activity of research and the provision of higher learning.

It has been left to my discretion to decide when and how this Academy statement might be added to any debate.

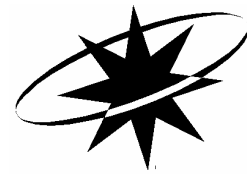
The meeting also discussed the idea that the annual meetings be, from time to time, held in a city other than Canberra. There was support for this idea, and it will be taken

further. If any Fellow has an opinion on this, please do communicate it to me or to John Beaton.

It was pleasing to be able to reflect on a very active and interesting year for the Academy. Its processes and Secretariat are working well, its regular programs are productive and valuable and there are a number of new developments that show promise. All these characteristics were on display at the annual meetings.

The Secretariat did a superb job in organising the complex set of activities and the many and disparate demands of all the people involved. We are indeed well served by them. When you are in Canberra next, please drop in, say hello and meet the team that so effectively underpins all the activities of the Academy.

**Sue Richardson**



## The Right to Water: 'Ownership' and Responsibility

### Parting the Waters: Frontiers in Water Management MD Young and JC McColl

A key focus of the National Water Initiative will be to implement a **robust framework** for water access entitlements that encourages investment and maximises the economic value created from water use, while ensuring that there is sufficient water available to maintain healthy rivers and aquifers. The framework will be compatible between jurisdictions and reflect regional variability in the reliability of water supply and the state of knowledge underpinning regional allocation decisions. (emphasis added)<sup>1</sup>

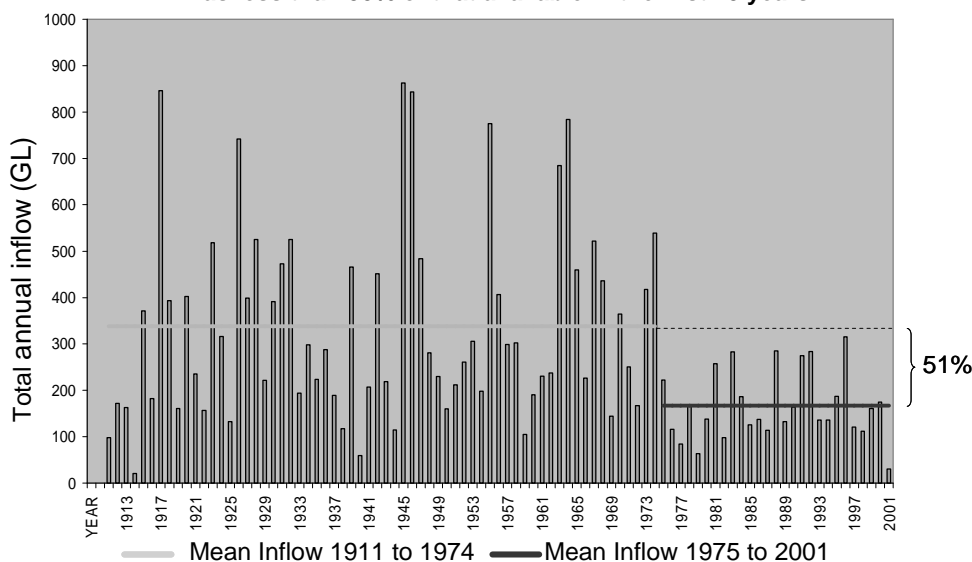
#### The state of the Nation

**D**riven by the emergence of widespread urban water shortages and the declining health of the River Murray System, Australian governments are pushing the frontiers of water policy reform. There is a sense of urgency. Arguably, policy reform is now ahead of theory and empirical analysis, especially theory and analysis that is publicly available and, hence, contestable.

Concern about the way we manage our water supply systems, both rural and urban, is being accelerated by increasing awareness of the prospect of adverse climate change. The impact of the risks associated with climate change are well illustrated by Perth's recent experience, as has been noted elsewhere. During the last quarter of last century this city appears to have lost 50 per cent of its expected water supply (Figure 1).

Figure 1

The supply of surface water available to Perth in the last 25 years of the 20th century was less than 50% of that available in the first 75 years



### The National Water Initiative

In response to concerns about the state of water supplies across much of the Nation, the critical environmental status of the Snowy River, and the declining health of the Murray-Darling Basin and of the River Murray System in particular, the Council of Australian Governments (COAG) recently agreed to a National Water Initiative (NWI) whose detail is set out in two agreements:

- An Inter-governmental Agreement on a National Water Initiative (NWI IGA) that commits all States and Territories except Tasmania and Western Australia to a 10 year schedule of 87 time-stamped reforms to the management of water and water-dependent systems;<sup>2</sup> and
- An Inter-governmental Agreement on addressing water over-allocation and achieving environmental objectives in the Murray Darling Basin (MDB IGA) which includes a commitment 'to invest \$500 million to address water over-allocation' and to do so in a manner that is 'cost-effective'<sup>3</sup>

Collectively, these documents set three interdependent agendas relating to urban water, rural water, and the River Murray. The goals and approaches set for each mix theoretical insights with a degree of political pragmatism. At the highest level, there is interest in and support for the proposed reforms to produce 'robust' outcomes.

### Robustness

Robust arrangements stand the test of time and endure. They are designed to work efficiently and equitably in all circumstances. No further modification is expected. When the system they are associated with is severely stressed, robust arrangements can be relied upon to continue to function and produce the intended outcome. In contrast to many policy reform processes, the perspective offered by instituting 'robust' arrangements is very long term. One example of a robust institutional arrangement is the Torrens Title system now used to register interests in land throughout much of the world.<sup>4</sup> The internet is often described as robust because of its capacity to withstand virtually all known forms of assault.<sup>5</sup>

Over the next few years, there is a choice. The Nation can search for excellence and establish such robust arrangements, or see the NWI as simply providing a framework for a series of small steps in an ongoing water reform process.

If willingness to search for robust solutions is pursued aggressively, Australia can expect to become the world leader in water policy development and implementation. Indeed, the opportunity is already there. Last year in an international review of water policy, *The Economist* concluded that 'The country that takes top prize in water management is Australia.'

As noted in the pre-amble to the NWI's statement of objectives;

Full implementation ... will result in a nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes.

We should be aware that the NWI could result in optimal outcomes that endure forever, **but may not result in optimal outcomes**. The nature of the outcome will depend upon the willingness of governments and the people who serve them to attend to the detail, which in turn is dependent upon ensuring the understanding of, and obtaining support for robust reform from the community and from industry.

### **A mature water economy**

When viewed through the eyes of an economist, the state of Australia's water supplies and the health of our waterways and aquifers suggests we now have a mature water economy, especially in southern and eastern Australia, where we must live within absolute limits and face up to the variable nature of our climate. Very few cost-effective opportunities to build new dams or to divert rivers inland remain – especially when national preferences for the maintenance of ecosystem services are taken into account.

In mature water economies, limits are set to the amount of water that may be used for consumption. Restrictions on water use, pricing policies and trading arrangements are used to determine who gets to use that which is available. There is competition among users and among uses. Some users are interested in consuming water, some in ensuring that it provides ecosystem services, while others are more interested in ensuring that sufficient is left for them to go boating and to generally enjoy water environments.

This competition draws attention to one of the biggest dilemmas in the management of a mature water economy. The greater the percentage of the water we wish to consume, the more sophisticated the allocation and management arrangements have to be. Very simple allocation and management systems can be used if we only aspire to consume 10 per cent of average natural flow. Relatively complex systems are needed when we wish to consume 50 per cent or more. In the case of the River Murray System, where we currently consume nearly 80 per cent of the average natural flow for commercial purposes, very sophisticated management systems are necessary.

### **Urban water**

#### ***Supply variability and sources***

Throughout most of the twentieth century, urban water supplies were abundant. As demand grew, new dams were built. Towards the end of that century, however, many cities for the first time hit a scarcity limit. Today, the maintenance of household lawns and gardens is a very significant part of the water industry and depends upon a reliable supply. Australia has a highly variable climate and water supplies, and we have invested large amounts in the development of storage dams and distribution systems. In southern and eastern Australia, particularly near most large urban centres, we have hit the dam supply limit when construction cost per unit of stored water, and community preference for the environment is taken into account.

Australian Governments are now searching for other reform opportunities. The first reform was to introduce more astute pricing regimes and, during droughts, water use restrictions. Urban water users have responded by installing water saving systems, dual flush toilets, low volume showers and changing the plants they grow. With these simple options gone and increased demand from a growing population, effort is turning again to other more challenging ways of increasing the quantity of water available. These include

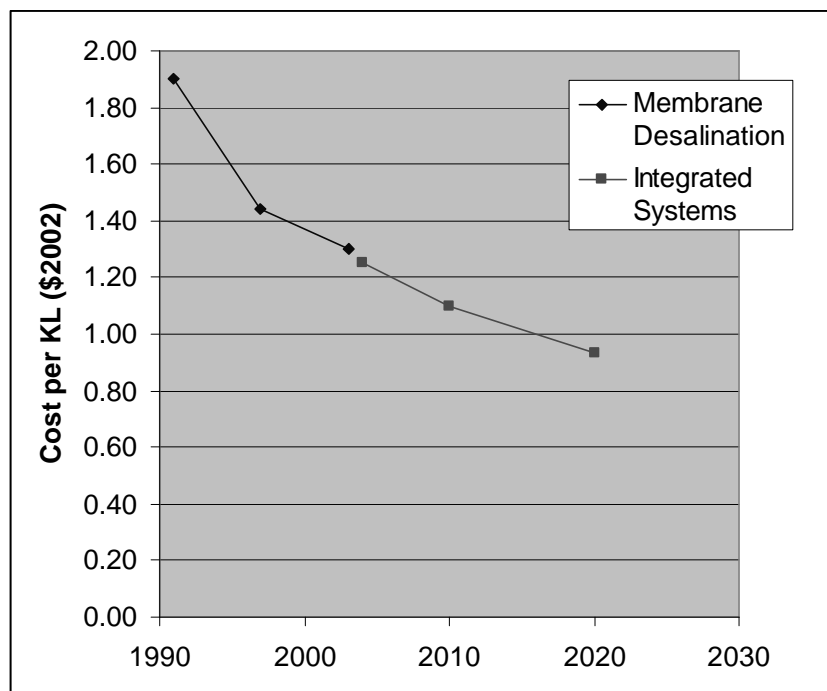
- The development of aquifer storage and recharge schemes that capture storm water, store it in an aquifer until it is needed;
- Recycling of treated sewage water; and
- Development of groundwater sources.<sup>6</sup>



As with many start-up technologies, the cost-effectiveness of many of these new opportunities is questionable. As an alternative, water managers in cities like Perth have started work on construction of a desalination plant and in Sydney are starting to seriously consider desalination as a potential source of urban water supplies. One of the big advantages of desalination schemes is that they rely upon a non-varying supply source – sea water. Desalination can be used to top up a varying land-based supply source and thereby satisfy user preferences for access to a constant supply of water.

From a policy perspective, the cost of desalination is going in the opposite direction to the cost of sourcing water from traditional sources. Desalination costs are falling (see Figure 2), while the costs of traditional sources of water, such as dams, is rising. Ten years ago, the cost of desalination was around \$5.00 per KL, but in an ideal location it can now be delivered for less than \$1.00 per KL. Many urban consumers appear to be willing to pay significantly more than \$1.00 per KL in order to maintain their gardens, wash their cars and keep their swimming pools full.

**Figure 2**  
**Changes in the cost of desalination, South Australian study**  
 (Source: The Water Report, 27 September 2004.)



The falling cost of desalination draws attention to pricing policy and choice. In Australia, water prices are set and delivered through several mechanisms:

- The separation of the agency responsible for managing resources water from the utility that supplies it;
- Appointment of independent bodies responsible for setting prices;
- Two part tariff arrangements that involve a fixed charge and a charge that varies with the volume used;

- The introduction of opportunities to trade entitlements and allocations so that users are made more aware of the opportunity cost of or value of a megalitre of water.
- In the case of virtually all cities, water supply utilities are now responsible for delivering water.

Most cities also use two part tariff structures but, as yet, few charge for externalities not managed by other means. Arrangements for water pricing are also becoming more complex (See Table 1).

**Table 1**  
**Step tariff charges for water consumption, 2002-03<sup>7</sup>**

Town/City	Population receiving water supply services (000s)	Total Annual Consumption <sup>1</sup> (ML)	Price per Kilotre (\$)
Adelaide	1,077	177,648	0.40 < 125kL 0.97 > 125kL
Brisbane	905	165,353	0.82
Sydney	4,198	634,742	0.94
Melbourne	3,470	479,215	0.77
Perth	1,426	215,315	0.40 (0 -150kL) 0.65 (151 – 350kL) 0.88 (351 – 550kL) 1.01 (551 – 750kL) 1.07 (751 – 1150kL) 1.19 (1151 – 1950kL) 1.47 (>1950kL)
Canberra	346	56,148	0.41 < 200kL 0.97 > 200kL
Shepparton	36	11,112	0.35
Central Highlands Water <sup>2</sup>	113	17,815	0.76
Mildura	32	12,617	0.225 < 400kL 0.40 > 400kL
Bendigo	78	12,260	0.55

1. Total consumption includes all water consumed by households, industrial, commercial and open space users. (1ML = 1,000,000L)
2. Central Highland Water data includes Ballarat and surrounding towns such as Daylesford, Ballan, Maryborough, Beaufort, Avoca, Creswick and Clunes.

For Metropolitan water supplies, at paragraph 66 of the NWI IGA, State and Territories agree to

- i) continued movement towards upper bound pricing<sup>8</sup> by 2008;
- ii) development of pricing policies for recycled water and stormwater that are congruent with pricing policies for potable water, and stimulate efficient water use no matter what the source, by 2006;
- iii) review and development of pricing policies for trade wastes that encourage the most cost effective methods of treating industrial wastes, whether at the source or at downstream plants, by 2006; and
- iv) development of national guidelines for customers' water accounts that provide information on their water use relative to equivalent households in the community by 2006.'

'Expect the cost of the water to continue to rise, especially in cities like Perth and Sydney and for charging arrangements to become more complex than they already are.'

In the case of urban water policy, the greatest and perhaps most challenging step is the introduction of water trading arrangements and the likelihood of competition with rural areas for the supply and re-use of water.

With regard to trading, the NWI IGA aims to 'facilitate the efficient functioning of water markets, including inter-jurisdictional water markets, and in both rural and urban settings.' There is clearly an intention to allow and encourage urban water managers to profit from the annual sale of water deemed surplus to urban requirements to irrigators, and when supplies are inadequate to purchase additional entitlements from rural water users. Issues still to be resolved and which are critical for the future water use include the questions of whether or not:

- All urban water supply entitlements should be made tradeable and defined with the same degree of reliability and in the same way that rural water entitlements are?
- The management of sewage water and stormwater systems should be separated from management of 'first use' water supply systems?
- Entitlements to access untreated sewage water should be allocated to sewage infrastructure managers rather than to those who generate the sewage or to those who supply 'first use' water?

Arguments can be put for and against each of these questions but, pending further analysis, if robustness is the policy driver, then the answer to each of these questions is probably 'yes' – even though it will dramatically change perceptions about the best way to manage urban water use. The most dramatic of these changes is the proposal to allow future urban water users to buy water entitlements from irrigators. Historically, urban water users, especially those along a river, have had a prior right to take enough water to meet their needs without having to negotiate with irrigators. Paving the way, SA Water has now begun buying up irrigation water along the River Murray so that they will be able to meet the ongoing needs of metropolitan South Australians.

A commitment to robustness would also suggest much wider use of market-based instruments. Governments could seek to progress beyond the minimum agreed to in the NWI IGA paragraph 73, namely to:

- (i) 'continue to manage environmental externalities through a range of regulatory measures (such as through setting extraction limits in water management plans and by specifying the conditions for the use of water in water use licences);
- (ii) continue to examine the feasibility of using market based mechanisms such as pricing to account for positive and negative environmental externalities associated with water use; and
- (iii) implement pricing that includes externalities where found to be feasible.'

As stated above, the challenge for Australian urban water managers is to decide whether or not they wish to go for global best practice that would require performance significantly above that proposed by the NWI. From an industry development perspective, one would expect quite different investment decisions if there is a commitment to global excellence – for example, widespread use of market-based instruments and pricing arrangements that account for all residual externalities. Robust solutions to difficult problems would be found.

## **Rural Water**

### **Pricing**

The NWI IGA in paragraph 66 deals with rural water pricing differently and requires:

'v) full cost recovery for all rural surface and groundwater based systems, recognising that there will be some small community services that will never be economically viable but need to be maintained to meet social and public health obligations:

- a) achievement of lower bound pricing for all rural systems in line with existing NCP commitments;
- b) continued movement towards upper bound pricing for all rural systems, where practicable; and
- c) where full cost recovery is unlikely to be achieved in the long term and a Community Service Obligation (CSO) is deemed necessary, the size of the subsidy is to be reported publicly and, where practicable, jurisdictions to consider alternative management arrangements aimed at removing the need for an ongoing CSO.'

It is interesting to observe that while urban water utilities are expected to achieve upper bound pricing, rural water users are only expected to achieve lower bound pricing. Amongst other things, this can be expected to distort trading between the two sectors.

### **Entitlements and Trading**

While NWI IGA pricing criteria are less for rural users than those for urban water users, the reverse is the case when it comes to the definition of water entitlements and trading. Trading can create significant opportunities for increased economic activity. In the case of the wine industry, for example, much of the recent expansion of grape plantings and production would have been impossible without water trading (Figure 3).<sup>9</sup> In this case, the NWI IGA is consistent with world best practice and sets out an expectation that:

'The consumptive use of water will require a water access entitlement, separate from land, to be described as a perpetual or open-ended share of the consumptive pool of a specified water resource, as determined by the relevant water plan..'

... and that

'Water access entitlements will:

- i) specify the essential characteristics of the water product;

- ii) be exclusive;
- iii) be able to be traded, given, bequeathed or leased;
- iv) be able to be subdivided or amalgamated;
- v) be mortgageable (and in this respect have similar status as freehold land when used as collateral for accessing finance);
- vi) be enforceable and enforced; and
- vii) be recorded in publicly-accessible reliable water registers that foster public confidence and state unambiguously who owns the entitlement, and the nature of any encumbrances on it..’

and that...

58. ‘...water market and trading arrangements ... facilitate the operation of efficient water markets and the opportunities for trading...

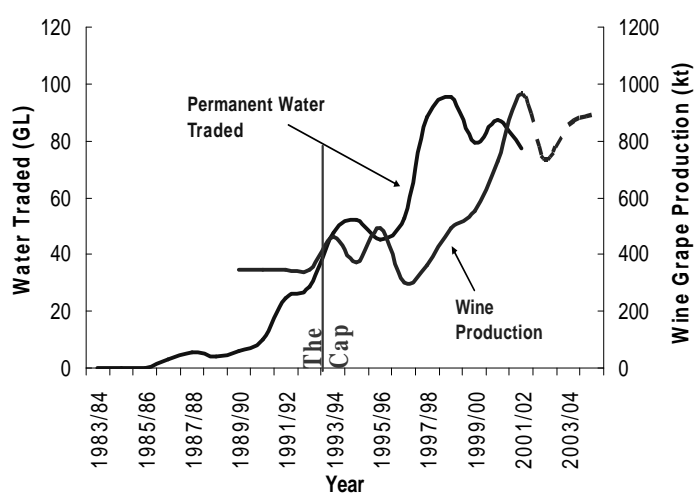
60. (iv) in respect of any existing institutional barriers to intra and interstate trade:

- a) immediate removal of barriers to temporary trade;
- b) immediate removal of barriers to permanent trade out of water irrigation areas up to an annual threshold limit of four percent ... with a move to full and open trade by 2014 at the latest, except in the southern Murray-Darling Basin where it..’ has been agreed to.. ‘enable exchange rates and/or tagging of water access entitlements traded from interstate sources to buyers in their jurisdictions by June 2005.’

If these entitlement and trading reforms are put in place, Australia will move to the very frontier of water policy development.

Importantly also, the NWI IGA in paragraph 30 provides for the management of water use externalities to be dealt with separately from the entitlement and trading system.

‘Regulatory approvals enabling water use at a particular site for a particular purpose will be specified separately to the water access entitlement’.



**Figure 3: Expansion of water trading and wine production in the Murray Darling Basin**  
**There is a 3-5 year lag between planting and increased wine production**

(Adapted from Stringer and Wittwer, 2001 as printed in Bowmer 2004<sup>10</sup>)

One of the most interesting proposals associated with reforms to the way entitlements are defined, is the commitment to establishment of 'publicly-accessible water registers that foster public confidence and state unambiguously who owns the entitlement', and to make such entitlements mortgageable in a manner that is similar to that which operates for freehold land. The language chosen here is cautious and does not go as far as to guarantee the integrity of entitlement registers and trading arrangements such an administrative error could result in an obligation to pay compensation to an aggrieved party. This option is open, but some States may not go all the way.

If the integrity of government-maintained registers is guaranteed, then entitlement holders may be offered access to finance at lower interest rates than are available to those holding only an indirect interest in the water they use. In particular, this may create an interesting dilemma for irrigators whose water is held by an irrigation corporation or a trust in which they hold shares. These corporations and other similar bodies can be expected to respond by establishing their own registers and entering into legal arrangements that either guarantee the integrity of their corporate share register and encumbrances over it or, alternatively, by insuring the integrity of these privately managed registers. If irrigation corporations can not do this in a manner acceptable to the banking sector, then there will be considerable pressure on these corporations to allow their shareholders to transfer their water out of these companies and place it on a government register. If this is done, then the entitlement holders would have to contract the company to deliver water.

There is a lot of fine print around these issues but the NWI IGA (paragraph 63) makes it clear that NSW Government will be making necessary legislative changes to give effect to a Heads of Agreement with major irrigation corporations to permit increased trade, including the removing of barriers to trade up to the interim threshold limit of 4 per cent per annum of the total water access entitlement for any water irrigation area by 2005.

### **Unresolved issues**

#### ***Lowering transaction costs***

Water trading occurs between willing buyers and willing sellers and, as such, is typically in the interests of the two parties involved. However, without the implementation of robust management arrangements, such trade may result in environmental loss and may change the reliability of supply of the pools of water involved in the trade. Third parties affected by the trade, such as those involved in supplying services to water users or those owning supply infrastructure may win or lose. One of the biggest challenges will be to develop the means to manage these impacts through the use of tagging arrangements, exit fees, and other methods.

The transaction costs associated with water trading can be high. As the NWI IGA suggests the development of consistent ways to define water entitlements is one way of reducing transaction costs. Another way to reduce transaction costs is to separate the management of the environmental impacts associated with the way this water is used from the definition of entitlements and allocations. When entitlement and allocations are separated from the definition of use conditions, very low-cost allocation trading arrangements can be put in place by establishing bank-like account systems and making them accessible over the internet.<sup>11</sup>

At the moment, there are a plethora of types of water entitlement and allocation on the water market and, hence, many opportunities to simplify the system. Most policy debate associated with the Murray-Darling Basin tends to suggest that there are really only two types of surface water entitlement - high security entitlements and general

security entitlements. When one looks more closely at entitlement registers and the way each is defined, however, it becomes apparent that there are numerous types of water entitlement and a multitude of types of trade permitted.

With freer trade and only two types of regulated surface water licence - a high security entitlement whose allocation from year to year would be very constant, and a general security entitlement whose allocation would vary from year to year - water users will be able to make a private decision as to how reliable their water entitlement should be. Given the difference in the cost of a high security versus a general security entitlement, many irrigators may prefer to hold part of their entitlement as a high security entitlement and part as a general security entitlement. Others may prefer to buy water on the open market as and when they need it. Further, if water entitlement management is separated from use management, then considerable entitlement rationalisation could occur. There are many models but one of the simplest would be a reduction to two surface water entitlement types per catchment or river system.

### **Interception**

One issue that still needs to be addressed is the question of how to manage changes in land and water use practice that reduce river flow but are not included in current accounting systems. Major omissions that diminish river flow include increased forestry in high rainfall areas (stimulated by tax subsidies), increased farm dam development, increased water use efficiency, and increased groundwater use.<sup>12</sup> Under the NWI IGA, all States are required to have in place arrangements that deal with these so-called interception issues 'no later than 2011.' In the River Murray System, this issue is particularly challenging as unless the scope of allocation policies is significantly changed, increased interception and a decline in return flows can be expected to reduce the volume of water in the system by some 1,500 GL per annum over the next 15 to 20 years (Table 1). The current NWI IGA commitment to return 500 GL to the River Murray over the next 5 years is aimed at improving existing river health. In effect, there is a 2,000 GL gap, and unless the interception issue is addressed, inevitably the benefits from securing volumes of water for the environment will be dissipated over time.

Other river flow reducing factors not considered in Table 2 include the impacts of climate change previously mentioned and post bushfire recovery.

Further consideration of Table 2 reveals an interesting management issue. At present, the amount of water allocated to general security water holders in any season is managed by reference to rules associated with the volume of water in the supply storages. This means that increased interception by landholders above the dam has the same effect as a drought. Allocations are reduced as interception increases. Interception below the storage, however, means that river flow is less and, hence, the main impact is on the environment rather than irrigators.

### **Who should own urban water entitlements**

Lack of specificity is potentially as important an issue in urban catchments as in rural catchments. As a general rule, entitlements to stormwater, sewage and recycled water have not been defined with any specificity. Governments are subsidising the installation of rainwater tanks but as with the farm dam issue, this reduces stormwater run-off and opportunities for others to manage it. A similar issue exists with untreated sewage water. Recently, the National Competition Council (2004) in a draft recommendation has ruled that Sydney Water must grant third party access to much of Sydney's sewage water so that these third parties can mine, treat and then on-sell the treated product. In time, we can

expect entitlements to this potentially valuable resource to be defined and made tradable. Similar decisions can be expected for access to storm water.

**Table 2**  
**Estimated reduction in mean annual flow and available seasonal allocations of design omissions in the entitlement systems used to allocate water in the River Murray Basin (baseline 1993/94)**

<b>Design Omission</b>	<b>Net effect</b>
<i>Reduced drainage and groundwater returns to the River resulting from water use efficiency savings <sup>a)</sup></i>	-723 GL
<i>Reduction in water yield from catchment land-use changes like increased forestry and farm dam development <sup>b)</sup></i>	-600 GL
<i>Reduced groundwater flow to the River as a result of increased installation and operation of Salinity Interception Schemes <sup>c)</sup></i>	-20 GL
<i>Reduced groundwater flow to the River from increased groundwater use <sup>d)</sup></i>	-349 GL
<b>Estimated net reduction in mean river flow and allocations to irrigators</b>	<b>-1,692 GL</b>

- a) This assumes that a mean of 8,734 GL is used for consumptive purposes in the River Murray System. Since 1993/4 there has been considerable investment that has sought to increase water-use efficiency. If 1,500 GL is withdrawn from irrigation, it can be expected that irrigators will respond by increasing water-use efficiency. It is assumed that the collective long run effect of reduced groundwater return to the river and reduced surface water return, in those systems where licences are defined in gross not net terms, and increased investment in the capture and use of run-off, will be around 10% of the remaining water.
- b) It has been estimated that from 2002, increased plantation forestry stimulated by financial incentives will reduce recharge across the entire Murray Darling Basin by 1,300GL.<sup>13</sup> Assume that this reduces mean flow into the River Murray System by 600GL. The estimate is intentionally conservative. More accurately, an estimate of the impact from 1993/94 to 2002 could also be included. Recent advice suggests this impact could be as big as that caused by forestry development in high rainfall areas.
- c) At present, pumping of saline water and its subsequent evaporation as part of a salinity interception scheme is not defined as an extractive use which needs to be managed under the cap. This estimate of 20 GL is also conservative. The MDBC has since advised that 40 GL is a more appropriate estimate of the impact of existing and planned schemes.<sup>14</sup>
- d) Results from MDBC studies are understood to have estimated that increasing groundwater development will erode the Cap by somewhere between 4 and 7%.

***A fixed or market influenced allocation policy?***

Another issue of critical importance is the question of whether or not the amount of water available to irrigators should be determined in the market place, by administrative policy makers, or by some combination of the two. At present, the amount of water to be made available to water users is decided primarily by rules set out in water sharing plans. An



exception is the opportunity in NSW for holders of general security entitlements in the River Murray and the Murrumbidgee system to carry forward unused allocations from one year to the next. This arrangement provides irrigators with increased economic opportunity by allowing between season trade-offs without having to resort to the market place.

If there is to be consistency among States, then all States may like to consider introducing a carry forward mechanism. Alternatively, access could be provided to such an arrangement via leasing water from another State.<sup>15</sup> In any event, if any State offers such an arrangement and restrictions on temporary trading between States are removed, the market's invisible hand can be expected to offer access to a carry forward facility to all.

Moreover, in the River Murray Agreement there is a commitment to allow counter-cyclic trading. Counter-cyclic trading involves selling water allocations to irrigators in droughts and then buying more water back during wetter periods when the market price for water is likely to be cheaper.

An interesting empirical issue is the question of whether or not the same gains can be achieved through the development of derivative markets for water,<sup>16</sup> and also, how different ways of defining release strategies affects the economic efficiency of water use.

#### ***Increasing environmental allocations***

The NWI, among other things, aims to 'ensure the health of river and groundwater systems by establishing clear pathways to return all systems to environmentally sustainable levels of extraction.' How much water is necessary to do this is best left for another forum. The NWI IGA does, however, require 'selection of measures primarily on the basis of cost-effectiveness, and with a view to managing socio-economic impacts.' The choice of words here suggests that the emphasis is on cost-effectiveness. Socio-economic impacts are to be managed using separate instruments and policies. This approach is consistent with Tinbergen<sup>17</sup> who established the principle that if one wants a dynamically efficient outcome one must use separate instruments to manage separate issues.

Essentially there are only two options: increasing the amount of below 'cap' water entitlements held by the environmental manager; and, improved management of the above 'cap' water that has not been allocated for consumption.

If the criterion for securing water for the environment is cost-effectiveness, then the obvious performance benchmark is the cost of buying water entitlements in the market place. Only investment schemes that save water for the environment at less than the price of buying water should be approved, with the cost of any on-going management of a project included in the evaluation.

When all these considerations are put together and if cost-effectiveness is the criterion, one would expect a significant volume of any allocated water that needs to be returned to a river to be purchased. The main reason for this is that any irrigator who is aware of an opportunity to make savings at less than market price would be better off making the necessary investment and selling the saved water.

One cost-effective option that has yet to be floated is an increase in the incentive for people to donate water to the environment. Under the Income Tax Assessment Act, the smallest donation of water that is tax deductible is \$5000 while the smallest donation of cash that is tax deductible is \$2. Given the fact that market prices for water are now published on the internet, it would seem reasonable to lower the threshold for donations of water by irrigators to a registered environmental trust to a much lower level. If this was done, many irrigators may be willing to donate considerable volumes of water. As the real cost to government of a donation will always be less than 50 per cent of market price this may prove to be the most

cost-effective of all measures. The administrative requirements of any such scheme would need to be carefully considered.

### **Salinity trading**

Unfortunately, Australian soils and the groundwater systems tend to naturally contain large amounts of salt and, as a result, river and aquifer salinity needs to be managed.

At the moment, salinity in the River Murray System is managed by States which undertake to make investments that will off-set the impact of any new developments or projects. A quasi-government to government salinity trading scheme operates under the current MDB Salinity Strategy. Individual irrigators and dryland irrigators are not provided for in this market with the result that they have little incentive to change practice and/or relocate to less salt prone areas.

Pushing the frontiers, albeit cautiously, the NWI IGA proposes 'a study to assess the feasibility of establishing market mechanisms such as tradable salinity and pollution credits to provide incentives for investment in water-use efficiency and farm management strategies and for dealing with environmental externalities.' If best practice is the goal, then such a study could include a salinity trading trial of the size and vision of the Pilot Interstate Water Trading Trial in the River Murray System.<sup>18</sup>

### **Where to from here?**

Looking into a crystal ball and beyond the NWI IGA is difficult. However, if one could do so, one could perhaps imagine a brave new world where Australia is renowned for the way it solved many of its current water management issues. In particular, it could be known for the way it introduced market-based instruments to achieve optimal economic and environmental outcomes and used a range of other processes and measures to effectively manage any adverse social and economic aspects of change.

In this future world, one might see urban water supply utilities, sewage management utilities, irrigators and environmental water trusts all trading water on a regular basis with one another. They may also trade salinity credits. Cities, like Adelaide, may even decide to trade-off the damage from salinity against the cost of buying more salinity credits. All these parties may also find themselves trading in greenhouse gas emission credits.

All involved will understand that more trees means less CO<sub>2</sub>, but also less river flow and hence increased river salinity. They will also understand that more irrigation and more land clearing for agriculture may also mean more salinity. Similarly, more desalination requires more energy and produces more greenhouse gas emissions.

The template is there. A National Water Commission is to be established to report to COAG on progress in implementing the NWI IGA and advise on actions required to better realise the objectives. The only question is how much support industry, community and environmental representatives will give to those charged with responsibility to implement the NWI IGA and beyond. Strong support would involve:

- demanding excellence in performance from those involved in water management and governance;
- insisting on robustness in the definition and registration of entitlements coupled with simple, fast, low-cost trading arrangements;
- ensuring that water accounting arrangements include the assessment of all impacts on flow;

- arguing for upper bound pricing to include externalities, coupled with opportunities for private investment in salinity management; and
- promoting incentives for the innovative management and sourcing of environmental water.

According to the NWI IGA, 'governments have a responsibility to ensure that water is allocated and used to achieve socially and economically beneficial outcomes in a manner that is environmentally sustainable.'

The ball is in the court of those who elect these governments – industry and community.



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- <sup>1</sup> Council of Australian Governments (2003). *Communiqué*, 29 August 2003.
  - <sup>2</sup> Council of Australian Governments (2004a). Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and the Northern Territory.
  - <sup>3</sup> Council of Australian Governments (2004b). Intergovernmental Agreement on Addressing Water over-allocation and achieving Environmental Objectives in the Murray-Darling Basin between the Commonwealth of Australia and the Governments of New South Wales, Victoria, South Australia, and the Australian Capital Territory.
  - <sup>4</sup> Young, MD and McColl, JC (2002). 'Robust separation: A search for a generic framework to simplify registration and trading of interests in natural resources'. CSIRO Land and Water, Adelaide; Young, MD and McColl, JC (2003b). 'Robust separation: A search for a generic framework to simplify registration and trading of interests in natural resources'. *Agricultural Science* 15, 1: 17-22.
  - <sup>5</sup> Callaway, DS; Newman, MEJ; Strogatz, SH and Watts, DJ (2000). 'Network Robustness and Fragility: Percolation on Random Graphs', *Physical Review Letters* 85, 25: 5468-5471.
  - <sup>6</sup> For an excellent review of these opportunities, see Radcliffe, J (2004). *Water recycling in Australia*. Australian Academy of Technological Sciences and Engineering, Melbourne.

- <sup>7</sup> Source: WSAA Facts, Water Services Association of Australia, Melbourne.
- <sup>8</sup> In the Schedule B(i) the NWI IGA defines upper and lower bound pricing. The main difference is in the treatment of dams and other asset classes which are no longer worth as much as they cost to build. Upper bound (urban) system managers are not allowed to recover monopoly rents but are expected to cover all costs and earn a return on the opportunity cost of all capital. Lower bound (rural) system managers only have to cover interest on debts and earn a return on the commercial value of the business. Both have to cover the costs of administration, operation, maintenance and externalities.
- <sup>9</sup> Young, M, Hatton MacDonald, D, Stringer, R and Bjornlund, H (2000). *Inter-State Water Trading: A 2-year review*. Policy and Economic Research Unit, CSIRO Land and Water, Adelaide, Australia.
- <sup>10</sup> Adapted from Stringer and Wittwer, (2001) as printed in Bowmer, K (ed) (2004). *Managing Australia's Water for the Future*. CSIRO.
- <sup>11</sup> Young and McColl (2002) *op cit*.
- <sup>12</sup> Young, MD and McColl, JC (2003a). 'Robust reform: The case for a new water entitlement system for Australia'. *Australian Economic Review* 36, 2: 225-34.
- <sup>13</sup> Peter Hairsine, personal communication; and Vertessy, R; Zhang, L. and Dawes, WR (2003). 'Plantations, river flows and river salinity'. *Australian Forestry* 66, 1: 55-61.
- <sup>14</sup> Andrew Close, personal communication.
- <sup>15</sup> This is called tagging in the National Water Initiative. Effectively, it means that when a person purchases or leases an entitlement from another state it retains the allocation characteristics of the original entitlement.
- <sup>16</sup> ACIL Tasman (2003). *Water Trading in Australia – Current and Prospective Products*. ACIL Tasman, Canberra.
- <sup>17</sup> Tinbergen, J (1952). *On the Theory of Economic Policy*. Amsterdam: North Holland.
- <sup>18</sup> Young *et al* (2000) *op cit*.
- <sup>19</sup> The authors would like to acknowledge and thank John Radcliffe and Claude Piccin for useful comments on an earlier draft of this paper and Greening Australia for the opportunity to road test it on a breakfast of business leaders in Sydney.



## **Specifying the Environment's Right to Water: Lessons from Victoria Tony Ladson and Brian Finlayson**

### **Introduction**

For most of Australia's post-settlement history water hasn't been allocated via markets; instead central authorities in each State have rationed and regulated its supply, notionally for the 'public good' but more realistically in response to political pressures. These authorities built a substantial infrastructure to collect and distribute water, mainly funded from general taxation. Most rivers in the populated parts of Australia have been heavily regulated and their management has been focused specifically on production objectives, with little concern for the environmental consequences.

The promise of water markets is that they will encourage greater efficiency in the use of water and improved economic outcomes, because water will tend to trade to where its use has the highest value (since the highest value users have the greatest ability to pay). There are, however, many non-economic impediments to the operation of the water market which have yet to be satisfactorily overcome.<sup>1</sup> Nevertheless, for markets to work well we need to be sure that the sellers really have something to sell and buyers will get something for their money. We need to own something before we can sell it. Markets require property rights and the Council of Australian Governments (COAG) has agreed that property rights to water need to be more clearly defined as part of a National Water Initiative.<sup>2</sup>

Recent work has reviewed ways to define consumptive rights to water,<sup>3</sup> but what of non-consumptive rights? Some water needs to remain in a river if fish are to survive and people to swim. Our interest in this paper is in the way the environment's right to water can be specified so that ecological and other non-consumptive values are protected. Current management arrangements for water have greatly reduced environmental values in many rivers. For example, native fish number only about 10 per cent of their pre-European populations in the Murray-Darling basin and species such Murray cod (*Maccullochella peelii peelii*) and trout cod (*Maccullochella macquariensis*) are threatened with extinction.<sup>4</sup>

The current water initiative is part of a dialogue about using markets to allocate water which dates from at least the early 1970s.<sup>5</sup> Victoria has been at the forefront of these proposals which makes its experience relevant as water trading develops nationwide. In Victoria, tradeable water entitlements were proposed as a way to reallocate water efficiently following a major review of irrigation and water resource management in 1984.<sup>6</sup> At that time trading was also suggested as a mechanism to address environmental issues associated with irrigation induced salinity.<sup>7</sup> With support from the government, market trading of water entitlements was developed and then trialed in the 1986-87 irrigation season.<sup>8</sup> The 1989 Victorian Water Act embodied definitions of water entitlements that aimed to facilitate market trading.

In 1994, COAG adopted a water reform agenda that involved market trading of water, separation of the roles of resource stewardship and water supply, and promotion of full cost recovery in water supply operations.<sup>9</sup> The National Water Initiative, adopted in 2003, reaffirms the COAG commitment to market based approaches to water reallocation by setting out to provide 'investment certainty', while simultaneously espousing the principles of environmental sustainability.<sup>10</sup>

Victoria has agreed to be part of the National Water Initiative but there is also major reform of water management going on within the State. A Green Paper 'Securing Our Water Future' was produced in 2003<sup>11</sup> and a White Paper 'Securing Our Water Future Together' was published in 2004.<sup>12</sup>

### **Determining environmental allocations**

Victoria has what are, on the face of it, good processes for ensuring that the environment gets its reasonable share of water. There are two processes in operation, Bulk Entitlement (BE) orders which apply on rivers where there is a major water storage dam (regulated rivers), and the Stream Flow Management Plans (SFMP) for rivers where there is no storage and water diversion is by riparian pumping (unregulated rivers).

The purpose of BEs is to secure ownership of water to those authorities who either need to use water for their own purposes, such as electricity generation, or who have responsibility to deliver water to users for domestic water supply, industrial use or irrigation. BEs are intended to provide authorities with a property right to water.<sup>13</sup> Stream Flow Management Plans specify rules for diversions from unregulated rivers.

As part of each of these processes there is some consideration of environmental values. Although we have previously argued that the resulting environmental allocation is likely to be inadequate<sup>14</sup> our main purpose here is to consider issues associated with their ownership. Victorian experience suggests that the environment's right to water will be eroded because of the dominance of production values unless the volume, along with the timing and location of delivery of environmental flows, are considered.

### **Legally recognising environmental allocations**

Once an environmental flow has been determined it must be legally specified in some way. There are three approaches.

- *'Equivalent right' model*

Under this approach, environmental flows are specified in the same way, and have equal status, as water for consumptive use.

- *Rules model*

Environmental flows are stipulated as operating rules that specify minimum passing flows, or conditions that would trigger an environmental release.

- *What's 'left over'*

If the volume of water available for consumptive use is completely specified, and it is less than the total volume available, then the remainder could be considered to be the environmental flow. (This is, more or less, the historic situation on many of Victoria's rivers.)

Each of these methods is being, or has been, used in Victoria. The following discussion highlights issues and problems associated with these approaches. We cannot suggest that any of them will be the best for all circumstances but we attempt to show that care must be taken to ensure that environmental flows are actually used as they were intended, that is, to protect or enhance environmental values.

### ***Environmental flow as an equivalent right***

Environmental flows can be specified in a form that is equivalent to water for consumptive use. This would imply that the environment would have the same security

of entitlement as other users and the same system of title would be used to specify and record its entitlement.<sup>15</sup>

This approach would allow environmental allocations to be traded on the water market along with consumptive entitlements. The Wentworth Group,<sup>16</sup> for example, has proposed the creation of 'environmental water trusts' that could buy and sell water in pursuit of environmental objectives. The Victorian White Paper<sup>17</sup> goes some way towards this approach by proposing that environmental water can be traded on the temporary water market but such trades would be subject to restrictive conditions.

Although there are clearly some advantages to specifying environmental flows in an equivalent way to consumptive entitlements, and it is allowed by the Water Act, there has been little support within the government bureaucracy for this approach. For example, the Department of Natural Resources and Environment, in their submission to a parliamentary inquiry into water allocation, questioned the value of BEs for the environment.<sup>18</sup> This was despite the fact that legally recognised environmental water entitlements form one of the nationally agreed principles for environmental flows.<sup>19</sup>

There is currently one situation in Victoria where a BE has been granted for an environmental allocation. Wetlands in the Kerang Lakes area and along the Murray River have an annual entitlement of 27.6 GL. In practice though, much of this water has not been made available to the wetlands. The water has to be delivered to these wetlands by using the channels that are operated by a water authority and which also supply water to irrigators. Irrigators pay a fee for water delivery and a similar fee is charged to deliver the environmental flow. For example in 1997-1998 13,700 ML of environmental water was delivered at a cost of \$155,802 (or \$11.37/ML).<sup>20</sup> The way that funds have been raised to pay these delivery charges is to sell some of the environmental water, which means less is available to meet environmental objectives. The water, once it is sold, can be used by irrigators. The end result is that a volume of water, specifically allocated for environmental use, ends up being used for irrigation.

Clearly, environmental flows require more complete specification than just a volume of water. There also needs to be details about where and when the water is to be delivered if the objectives of the environmental allocation are to be met.

The Victorian White paper proposes two new bulk entitlements that specify environmental flows in the Thomson and the Wimmera/Glenelg systems and documents a policy on charges for the management of environmental water. Where water is delivered via a distribution system an 'Environmental Water Reserve Manager' would be expected to pay costs to an irrigation authority. A more consistent policy statement would have ruled out selling environmental water to pay management charges associated with its use.

A corollary to this situation is in the use of natural river channels for the delivery of water from storages to irrigation areas. In Victoria the natural low flow period is in summer but this is also the time of maximum irrigation demand. Rivers such as the Goulburn are run at unseasonably high discharges for months on end during the summer with water well below the natural summer temperature. Perhaps an equitable approach to paying for the delivery of environmental flows could be an environmental charge on the use of natural river channels for delivery of water to consumptive users where that delivery interrupts the natural regime of the river.

### **Specifying environmental flows through operating rules**

The approach of specifying a volume of water for the environment in the same way as a consumptive allocation, is best suited to regulated streams. In these systems, it is possible to have environmental water stored in a dam and then released to meet environmental objectives; just as water for irrigators is stored and then released to meet production objectives. In these systems, the 'equivalent right' model should work well provided timing and delivery issues are addressed.

In unregulated systems a different approach to specifying environmental flows is appropriate. In these systems, flows are not supplemented by water released from dams so there is a natural seasonal variation in flow rate. In Victoria, low flows occur at the time of maximum demand and in some rivers, especially in dry years, most of the flow is diverted. Often a rostering system is used to ensure that all the licensed diverters get some water although the volume available may be much less than the licensed amount.

In these systems, specifying environmental flows as an equivalent right is not appropriate. Protecting environmental values requires a more secure entitlement than is available to consumptive users. It is in the driest time of a dry year that an environmental allocation is likely to be required and it is then that consumptive users have the least chance of getting their water.

Instead, a more secure way of specifying environmental flows is through operating rules. Most commonly this will be a flow rate below which rostering will be implemented and a minimum flow where further diversions are banned.

In Victoria, rules for water use in unregulated rivers are in the process of being determined. The White Paper promises that:

Over the next five years the Government will provide ecologically sustainable environmental water reserves in 21 priority unregulated rivers...through the development of Stream Flow Management Plans.

In stressed rivers with high environmental values, an environmental water reserve will be established by changing the pattern of diversions, ie, diverting more water in winter and less in summer.

Although the White Paper comments sound reasonable, and offer hope that environmental values in over-allocated rivers will be protected, in fact, several draft Stream Flow Management Plans have already been prepared with mixed outcomes for the environment. These plans specify operating rules, ostensibly to protect environmental values, but they are inadequate.

SFMPs arise from the provision in the Water Act for the Minister to declare a 'Water Supply Protection Area' for the purpose of protecting the surface and groundwater resources of the area. The declaration can be made on the minister's own initiative or by application from certain defined authorities who have responsibilities for water resources management in that area. When a water supply protection area has been declared the minister *must* appoint a consultative committee to prepare a draft management plan, the cost of which is borne by the authority that applied for the protection area to be declared.

The Act also sets out in some detail how the consultative committee will be constituted. At least half of the committee members *must* be owners or occupiers of land in the protection area (unless it happens to be an urban area). The Act goes on to



be even more specific. The minister *must* consult with the Victorian Farmers Federation (VFF) when appointing local owners and occupiers to the consultative committee. No other non-statutory organisation is accorded such power in the Water Act yet the VFF is a highly partisan player in matters of water resources management. The minister also has power to make decisions about how these committees meet and the Act requires that they complete a draft management plan within 18 months.

We have drawn attention here to matters relating to SFMPs which are prescribed by the Act, through the use of the word *must*. However, when dealing with environment protection the Act merely says that the plan *may* prescribe conditions relating to the protection of the environment, and *may* prescribe a permissible annual extraction volume (an issue of considerable environmental significance).

In practice, consideration of environmental requirements does take place through an environmental flow study that aims to determine the minimum flow in a river that will protect environmental values. This environmental recommendation is then considered by the consultative committee. Although the stated aim of the current streamflow management plans is to provide a: 'balanced and sustainable sharing of stream flows between all water users in unregulated catchments. Particularly how water is shared between consumptive use and what is left in the stream',<sup>21</sup> these environmental recommendations haven't been given much weight.

The act does not require the draft plans to be publicly available for comment but only to 'interested parties'. Only those people or groups directly affected by the plan can apply to have it reviewed. In these ways, the SFMP process gives considerable power over the plan to those with commercial interests in the water resources of the area. Irrigators are guaranteed 50 per cent of places on the consultative committee which effectively guarantees them a majority. *Entirely lacking* in the Act is provision for a secure and powerful representation on behalf of the environment.

Once a plan is declared, it can only be challenged by those affected, who are mainly irrigators. The authority responsible (usually a rural water authority) must administer and report on the plan. Enforcement and management therefore also lies under the control of those with commercial interests in the water.

As might be expected from a process that favours consumptive use, the outcomes from many SFMPs have not protected or enhanced the environmental qualities of streams. Three examples that reveal the deficiencies of this process are the SFMPs for the Yea, Kiewa and Ovens Rivers.

On the Yea River, which contains the endangered Macquarie Perch, an environmental flows study recommended a minimum flow of 40 ML/d and commented that below this level there would be high risk of environmental degradation. The consultative committee adopted a minimum flow of only 10 ML/d increasing to 20 ML/d after 6 years. This minimum flow of one quarter to one half the recommended value seems inconsistent with a stated objective of the plan to maintain self-sustaining populations of locally occurring native fish species. At present, it is likely that Macquarie Perch are surviving only because they are stocked (52,700 stocked since 1987-88),<sup>22</sup> a situation that doesn't exactly fit the requirement to be sustainable.

On the Kiewa River, the environmental flows study recommended a minimum of 150 ML/d at Kiewa but the committee set the allowable minimum at 80 ML/d. The scientists involved in the Kiewa study found there was a critical minimum below which 'environmental conditions exceed tolerance levels and become dangerous to stream dependent biota'. This critical minimum was 130 ML/d, yet the plan allows pumping to

continue down to 80 ML/d.<sup>23</sup> The Kiewa plan also specifies an 'operational tolerance' of 20 ML/d which means flows could go as low as 60 ML/d before a ban was applied; less than half the critical minimum.<sup>24</sup>

On the Upper Ovens River, the recommended environmental minimum was 200 ML/d at Myrtleford<sup>25</sup> yet the draft stream flow management plan allows diversions to occur down to less than 1 ML/d or 0.5 per cent of the required flow. Rostering isn't proposed until a flow of 60 ML/d. This is a seriously inadequate level of protection for this environmentally important river.<sup>26</sup>

Clearly, this is public policy gone awry. In these three rivers, the Yea, Kiewa and Ovens it will be legal for diverters to dry the river to beyond critical levels much more often than occurs naturally. On the Ovens, the draft plan would allow almost the entire flow to be extracted. The SFMP process allows the water users to decide how much water they want, without requiring them to accept responsibility for protecting environmental values. The SFMPs have also established a right for irrigators to take this water so they could then justifiably ask for compensation if, in the likely event, some of it is required to be returned to these rivers when their degraded state becomes apparent. The National Water Initiative specifies that 'governments will have to compensate users for changes in their entitlements resulting from changes in government policy'.<sup>27</sup> The cost and social dislocation associated with the Living Murray process<sup>28</sup> shows the dangers of over allocating water, yet we continue to do this in Victoria in the guise of community decision making.

So far, these plans have not been gazetted. The White Paper has been prepared since they were drafted so there is a possibility they will be refined. The language used in the White Paper seems to strongly support reallocation of water to protect environmental values but it is also the case that much of the rhetoric of the current plans is about protecting the environment: it's just the outcomes that are appalling.

Another positive aspect of the White Paper proposals is that Catchment Management Authorities will have responsibility to oversee Stream Flow Management Plan implementation and management of an environmental water reserve. Previously, water authorities had the lead role in Stream Flow Management Plans. Limiting diversions to protect the environment conflicted with their main role, which is retailing water. The inadequate Stream Flow Management Plans on the Yea, Kiewa and Ovens were all developed under the leadership of a water authority (Goulburn-Murray Water) and it is hoped that Catchment Management Authorities will implement fairer processes with better outcomes for the environment. At the least, perceptions of bias will be reduced. There remains, however, the problem that the constitution of the SFMP committees, as defined by the Water Act, mitigates against better environmental outcomes and the Act may need amendment.

#### ***Specifying environmental flows as water that is 'left over'***

On most Victorian rivers, environmental flows are usually any water that is 'left-over' - ie, the water that remains after consumptive entitlements have been met. This is a high risk strategy for environmental protection for four reasons.

*First* there are a variety of natural events that can reduce the total volume of water available in a river. These include climate change and bushfire. Without protection, the environment's share of the resource will absorb most of the decreases in supply.

*Second*, gaps in the entitlement system mean that exploitation is likely to be larger than planned which will reduce environmental flows. This problem arises because

current water property rights and regulations do not cover all aspects of the resource. Over time, exploitation may shift to those aspects which are not controlled which will affect the availability of the components of the resource where the rules are clear. Over exploitation is likely.

For example, there may be a property rights regime associated with diverting water from a river along with clear and enforced rules, but if groundwater use is not regulated, extraction of groundwater is likely to increase which will reduce river flows, most critically in the low flow periods when most of the streamflow is derived from groundwater.

There are two known gaps in the current regime of water entitlements:

- Increased water use associated with changing land use, particularly timber plantations. More water used by forests means reduced flows downstream.
- Reduced return flows when more of the water diverted from a river is used. Some water entitlements have been specified as a gross amount of water with return flows left unspecified. Historically, when water wasn't so valuable, much of what was diverted would have ended up back in the river. Now it is more likely to be used, which decreases the amount available to others.

Water allocations need to be specified in net rather than gross terms and all aspects of the resource need to be managed to prevent over exploitation.

*Third*, some consumptive entitlements are not limited to a particular volume but expand with the amount of water that is available. An example is the entitlements to 'sales' water on northern Victorian rivers. Sales water is made available opportunistically and is declared annually based on the amount of water in storage and the projected demand.<sup>29</sup> Sales water is in excess of a 'water right' that is a high security entitlement (100 per cent of a water right would be expected to be supplied in 96 – 99 per cent of years). Irrigators have also been allowed to divert 'off-quota' water, that is, uncontrolled flows in rivers that can not be captured in public storages. On regulated rivers, providing water for the environment reduces the volume in storage and can affect the availability of sales water in future years. It probably also decreases the likelihood of off-quota water because reservoirs are less likely to spill if some water has been released for environmental purposes. This was confirmed on the Goulburn River, where computer modelling showed that *any* water allocated to the environment reduced the security of supplies to irrigators.<sup>30</sup> This implies there really is no water 'left over' in this system.

In the future, these issues are likely to be addressed as the White Paper proposes that off-quota water be abolished and that sales water be converted to a low security entitlement that can be better defined. Water savings made as part of this conversion are slated to be available to meet environmental objectives.

The *fourth* reason why environmental flows need to be clearly specified is that it is not just the volume of consumptive diversions that need to be controlled if environmental values are to be protected. The timing of diversions can also be critically important. This argument applies to the Yea, Kiewa and Ovens Rivers discussed above. On these rivers, the total volume of diversions is small compared to the annual average volume of water available. The threat to the environment comes because on these unregulated rivers, most of the irrigation demand comes at the time when natural flow is at its lowest. Most of the year, there will be ample water 'left over' but during critical periods diverters may take all the water, placing environmental values at risk.

## Conclusion

In the current political climate, it is inevitable that much of the water in our rivers will be privately owned and traded so it can be used as efficiently and effectively as possible in the service of production objectives. The promise is that markets will shift water use to where it provides the greatest return. The challenge is to protect the environment against over exploitation. There are three main steps in meeting this challenge. First, enough water must be set aside to meet environmental objectives. Second this water must be specified in such a way that it can be delivered to the right place and at the right time. Third, the water must actually be used to protect and enhance environmental values.

This paper has explored the second of these requirements. Three ways of specifying environmental flows have been used in Victoria and all three have shortcomings, mainly because of the precedence given to production values in legal and institutional arrangements.

Although the new Victorian White Paper is strong on the rhetoric of environmental protection, effective government action will be required if the environment's right to water is not to be further eroded. Securing adequate environmental flows is complicated by the existing over-allocation of water in many river systems. It is not just a matter of providing secure title to the environment's share of the water, in many cases that water has to be first acquired from existing users.



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## **Indigenous Interests and Water Property Rights\***

**Jon Altman**

In its consideration of water property rights in 2002, the Council of Australian Governments (COAG) distributed a Water Property Rights Draft Discussion Paper for comment.<sup>1</sup> This outlines a set of common rules for fresh water entitlements and allocation to ensure a greater efficiency in use. General principles are laid out that look to ensure a more sustainable use of water, in the broad sense of ecological, economic and social sustainability. There is a focus on equity, both between users today and inter-generationally. While the COAG Discussion Paper is dealing principally, at this stage, with theoretical issues seeking to establish a water property rights framework that would be acceptable Australia-wide, it does not deal with particular groups within Australian society who may have special interests in water.<sup>2</sup>

It is important, even at this early juncture, to make some mention of one special interest group—Indigenous Australians, for four reasons:

- The water property rights framework that is being advocated is predicated on three important elements: security of tenure, transferability and clarity of specification. Arguably, these are all areas where there is enormous uncertainty from the Indigenous perspective, with regard to their water property rights interests in the native title era.
- It can be argued that the depressed economic status of Indigenous people in Australia today is explicable, at least in part, by the alienation of their ancestors' property rights in land and in resources. Historically, water rights have not been regarded as property in the same way as land and resources. A case can be made for ensuring that Indigenous interests in any property rights that are to be newly-created should be acknowledged, and a portion reserved (hypothecated) for Indigenous interests, to avoid mistakes or assumptions of the past.
- The very extent of the Indigenous estate in Australia—approaching 20 per cent of the continent<sup>3</sup> including substantial water catchment areas and in some jurisdictions far more (eg, 42 per cent of the Northern Territory rising potentially to 52 per cent, and over 80 per cent of the NT coastline)—suggests that the actual or potential property rights in fresh water of this group cannot be ignored. All too often the alienation referred to above has occurred because an Indigenous voice has not been heard in newly-emerging debates about efficient and equitable allocation of property rights.
- Recent case law has clarified a number of important issues in relation to the legal institution of native title. For example, in *Yanner v Eaton* in 1999 the High Court upheld that the harvesting of crocodiles for domestic use was a native title right. In *Mark Anderson on behalf of the Spinifex People v State of Western Australia* in 2000 'a right to take water for the purposes of satisfying personal, domestic, social, cultural, religious, spiritual or non-commercial communal needs' was recognized. However, considerable uncertainty still remains regarding potential native title rights and interests in fresh water. Such rights and interests may extend beyond the Indigenous estate, for example in situations where the quality of fresh water that flows on Indigenous land is impaired on other lands. Such uncertainty in itself generates transactions costs.

It seems incontestable that at present Indigenous interests, practices, and uses in, or associated with, different waters have not been acknowledged in the current water

reform agenda. These interests are extremely diverse across the Australian continent and probably always were. Nevertheless they need to be considered, understood, valued and integrated into any emerging water property rights framework. For future water resource markets to function efficiently and equitably, Indigenous property rights in water will need to be recognised and any particularities - some created by western laws, some by the articulation between western and customary laws - accommodated. Without such accommodation, uncertainties and inefficiencies in any new water market will be created, with potentially high transactions costs and potentially significant compensation expenses. For example, one could envisage a commercial allocation being challenged legally because it impacts on a catchment that has customary (economic or cultural) significance to a native title group.

The *Native Title Act 1993* (Cth) (NTA) is the key statute that has recognised customary rights in water and consequently, challenges any definition of property rights that is solely commercial. Since the 1992 decision by the High Court of Australia in the *Mabo* case, which recognised the existence of native title as part of the common law of Australia, there has been growing impetus for the definition, recognition and protection of Indigenous rights in both onshore and offshore waters. The NTA provides for the possibility of native title rights in the sea, at the same time confirming government ownership of water and minerals, while guaranteeing native title rights to customary use of resources, rights that are often dependent on inland water. In such situations possession can be differentiated from use rights. For example, floodplain wetlands, which can be significantly impacted by allocation of water to other purposes, are critical to the customary economies of many Aboriginal groups. This is an especially important issue in relation to migratory wildlife species like water fowl that remain an important source of food intake – habitat loss off the Indigenous estate might impact on the migratory patterns of species endemic on the Indigenous estate (and vice versa, of course). There is ethnographic evidence that such floodplains are of great significance in the customary economy.<sup>4</sup>

Section 24 of the NTA validates so-called 'future acts' carried out by governments relating to the management of inland waters after 1 July 1993 and to other management regimes after 1 January 1994. The NTA provides for the validation of other acts by each State/Territory and would apply to the issue of permits and licences. This provision recognises that native title rights can be extinguished or suspended to the extent that they are inconsistent with another right. However, in accord with the Australian constitution, compensation is payable by the State<sup>5</sup> for either extinguishment or diminution through the grant or issue of an inconsistent right. The implications of this on water management plans may differ between States given their different statutory bases for determining, issuing and regulating water rights and interests.

Two States, NSW and Queensland, have objectives in their water statutes that recognise the rights and interests of Aboriginal and Torres Strait Islander peoples. The NSW *Water Management Act 2000* is most comprehensive. The definitions in this Act define native title rights in a limited sense to mean 'the right to take and use water for domestic, personal and non-commercial communal purposes'. Regulations prescribe the maximum amounts of water that can be taken and used for such purposes in any one year. McKay<sup>6</sup> suggests that the recent High Court decision in *State of WA v Ward* supports the proposition that the new Water Acts do not extinguish or limit customary



native title rights to hunt, fish, gather and participate in cultural and spiritual activities. Again, use rights can be distinguished from rights of possession.

To provide a better explication of the possible implications of this statutory framework, based on economic principles, some recent research has used the concept 'hybridity' to analyse the inter-cultural nature of the economy on much of the Indigenous estate.<sup>7</sup> The hybrid economy, while highly variable, can be conceptualised as consisting of three sectors: the customary, the market and the state. The NTA recognises and protects extant Indigenous native title rights in the customary sector. How customary elements of the hybrid economy will interact with a wider commercial water market will need careful consideration. If the articulation between customary and commercial rights is overlooked, two potentially negative outcomes are possible. First, there will be no incentive for customary use to be efficient. Potential efficiency losses here may be small scale compared with those of commercial use, but may nevertheless be of strategic value especially in upstream water catchment areas. Secondly, and more significantly, if commercial use impairs customary use, then there are legal avenues of recourse for native title interests. Such scenarios are most likely where property rights and legal regimes are most contested, that is where Indigenous land and sea rights are already exercised and where there are legally recognised native title parties. When non-market (customary) interests in water are taken into account there are problems in the clarity of definition of rights in water.

An associated issue that might hamper a clear definition of property rights is that while the COAG framework focuses on private rights and use of water, native title is generally a communal (or group) right. Davies<sup>8</sup> discusses this issue in the context of natural resource management more broadly. Native title holders have no legal option other than to hold and manage native title communally. This is because native title is defined by common and statute law as a system of collective rights. By negotiated agreement, native title holders may choose to relinquish their native title to the crown. It is also possible to relinquish native title in favour of allocation of individual property rights to group members. However, if they continue as native title holders, native title interests must operate collectively as the title itself is inalienable and indivisible.<sup>9</sup> This has clear implications for potential trade in any newly-established water markets.

The NTA framework has a set of procedures that are designed to ensure that native title interests are not unfairly treated. These vary somewhat between past and future acts and between valid and invalid actions. There are also alternative dispute resolution mechanisms within the NTA framework that encourage agreement making.

As already noted, the NTA does not confer full property rights in fresh water to native title parties. The property right is only partial, covering customary use rights. In so far as future developments might affect native title interests there is a requirement that native title holders or claimants are notified and have a right to comment on such proposals. Not to go through such due process runs the risk of invalidity. This so-called right to negotiate (RTN) is a limited right, but if extinguishment or impairment of native title rights are a possibility then there is a basis for either seeking compensation or for brokering agreements that can be registered. There is a strongly emerging view that negotiating agreements is less costly and preferable to litigation. Indigenous Land Use Agreements (ILUAs) are voluntary agreements between a native title group and other stakeholders about the use and management of land: Neate<sup>10</sup> has referred to them as a risk management tool for Indigenous Australians. ILUAs that encompass water rights could establish a similar agreement process for the use and management of fresh water.

Native title holders whose status has been so determined and whose rights have been affected by past acts are entitled to compensation under the NTA. This compensation is payable either by the Commonwealth alone or with the States/Territories jointly, but not by any third party who acquired an interest as a result of a past act. With respect to land, compensation is provided on the basis of 'just terms' and to date has been capped at the equivalent value of a freehold estate. The operation of 'just terms' is unclear in relation to water rights and markets. It is important to note that under the NTA framework, native title rights can be extinguished or impaired by other legislation, but, again, such extinguishment or impairment must be compensated. Legislation which does not provide for such recognition and compensation may be invalid, at least in part, or challengeable in the court.

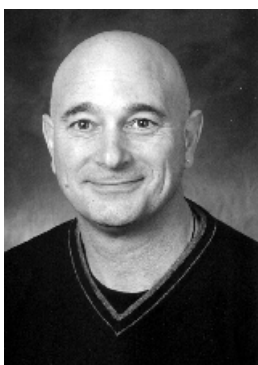
The current uncertainty about the workings of the future acts and of past acts compensation regimes under the NTA framework also generates uncertainty about how new water property rights and markets might be created unencumbered (or undistorted) by a wide range of native title interests. Under such circumstances, some suggestions addressing the issues outlined above are appropriate.

- COAG should consider acknowledging and explicitly recognising the potential impact of native title on water property rights. This could include the development of a national approach, including the use of standardised terminology, to recognising native title rights in water.
- COAG should support the development of a communications and public education strategy that explains the nature of native title rights in water. In particular, there is a need to investigate appropriate means to enhance the capacity of Indigenous stakeholders to engage more effectively with the emerging water market and trading framework.
- COAG should consider the value of initiating research case studies that assess the impacts of current water policies and frameworks on native title water rights, and that explore the potential for negotiation of local and regional water use agreements that parallel the Indigenous Land Use Agreement framework.
- COAG should facilitate equitable Indigenous representation on government and industry bodies involved in water management. This should be regarded as a two-way process. A better understanding of the effects of any new property rights in water on Indigenous interests can be gained through taking Indigenous knowledge into account, and Indigenous representation could also ensure greater direct dissemination of information to the Indigenous community about reform proposals and their potential benefits and costs.

COAG cannot create an efficient water market if the new property rights framework focuses only on commercial and private utilisation of water. There is another set of users that now has legal customary rights to water. Indigenous interests in water, now recognised in the native title statutory framework and emerging case law, must be accommodated from the outset. To establish an efficient water market requires not only the recognition of customary rights in water, but also some consideration of innovative approaches that might accord such rights commercial (or quasi-commercial) status to encourage efficient use and possible trade. To ignore such interests would run the risk of generating high future transactions costs. Legal debate would follow, inevitably, about the relative merits of commercial and customary rights

and the possible impairment of native title rights; and/or, potential for expensive compensation if native title rights are improperly impaired or extinguished.

Indigenous stakeholders should be considered from the outset in any proposal for the creation of new property rights in water - their diverse rights, interests, values and activities should be recognised and incorporated into water management planning. Ignoring Indigenous stakeholders runs the risk, alluded to at the outset, of further alienating an already disadvantaged group from rights in valuable resources. As significant land and coastline owners, Indigenous interests have statutory procedural rights to protect their native title. The continual triggering of the assertion of such rights through creation of an insufficiently inclusive definition of water property could entrench avoidable inequities and consequent inefficiencies in a new water property rights framework.



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\* In 2002 COAG agreed to the release of a draft paper on water property rights prepared by the Chief Executive Officers' Group on Water for a public consultation process. Fifty submissions were received, but few dealt with Indigenous issues. This article is an abridged and updated version of the submission prepared by the Centre for Aboriginal Economic Policy Research, ANU. This submission resulted in the addition of three specific references to Indigenous people in 'Water Access Entitlements: Final Report to COAG from the Chief Executive Officers' Group on Water' – as members of the wider community (p 8) and as a distinct stakeholder interest group (twice on p 9).

<sup>1</sup> Natural Resource Management Ministerial Council, Chief Executive Officers' Group on Water, Draft Report to the Council of Australian Governments at [www.daff.gov.au](http://www.daff.gov.au).

<sup>2</sup> An earlier and longer version of this paper 'Indigenous Interests in Water: A comment on the 'Water Property Rights–Report to COAG from the Water CEOs Group' Discussion paper by Jon Altman and Michelle Cochrane was submitted to DAFF in February 2003 (see [www.anu.edu.au/caepr](http://www.anu.edu.au/caepr)).

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**Fresh Water Rights and Biophilia:  
Indigenous Australian Perspectives  
Deborah Rose**

**Introduction**

In 2002 the United Nations Committee on Economic, Cultural and Social Rights declared that access to water is a human right, and that 'water is a social and cultural good, not merely an economic commodity'.<sup>1</sup> The UN's intervention in declaring water a human right recognises that the supply of quality freshwater has been identified as the world's most critical issue in the coming century. The consequence of the declaration is that countries that have ratified the International Covenant on Economic, Social and Cultural rights must now start to ensure access to clean water for their citizens. As the driest inhabited continent on earth, Australia's responsibilities in relation to the UN Convention are going to rest heavily.

Water ethics are central to water rights. The UN's World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), has identified freshwater as a high priority, and founded RENEW (Research and Education Network for Ethical Water use) to work with water ethics. RENEW has enlisted scientists in the endeavour to 'promote engagement in the ethical issues involved in the sustainable use and equitable sharing of water resources at all levels'; the Australian National University is hosting the Asia-Pacific Region Node.<sup>2</sup>

Following Michael Ignatieff's proposal<sup>3</sup> that 'human rights' are a ground for dialogue rather than a narrative of triumphal achievement, I take my discussion of water rights into the domain of ethics, focusing on systems of Indigenous water governance and philosophy. The analysis engages with ethics in the mode of bioethics and biophilia. In a provocative study of water concepts, Darrell Macer and his colleagues<sup>4</sup> propose that the term bioethics, short for biological ethics, denotes the ethical decisions we make concerning life. They argue that love of life lies at the heart of bioethics: 'It is the concept of love, balancing benefits and risks of choices and decisions'. More commonly, love of life is termed biophilia<sup>5</sup> and the concept is by no means unproblematic.<sup>6</sup> But regardless of problematics, Macer's ethical question continues to arise: does love of life entail love of water? In the spirit of dialogue, I offer some Indigenous Australian perspectives on this question.

**Water as right**

Water in Australia is governed ecologically by the reality that this continent is the 'driest, flattest, most poorly drained, and in fact largely inward draining land on Earth'.<sup>7</sup> The El Niño-Southern Oscillation (ENSO) amplifies unpredictability and high rates of variation,<sup>8</sup> and global warming is almost certain to exacerbate the unpredictability of water regimes. In a significantly provocative study of Australian dryland river systems, Walker et al<sup>9</sup> ask a question in respect of dryland rivers that is pertinent to environmental issues more generally: 'can the ecological integrity of dryland rivers be sustained ... if the environment is considered a competitor for water rather than a guarantor?' Their answer is no. Their ironically 'simple' recommendation: adjust demand to supply.

Walker and his colleagues may have had no inkling of the fact that their vision of how relationships between people and water could be organised had already been developed with extreme finesse by the Aboriginal people. Their inhabitation of the continent responded to risk and uncertainty with a range of social and physical

measures that ensured a balance between control and flexibility, and thus ensured human and other forms of life.

Indigenous people's organisation of their use of freshwater, including care and restraint, constitutes their essential adaptation to this driest of inhabited continents. Aboriginal people spaced themselves across the continent in densities that reflected the rainfall of a given area. Much like the Anglo-European settlers who now cluster in the well-watered coastal areas, Aborigines, too, sustained higher densities where this was possible, and sustained scattered low-density populations where that was all that the water could support. In the arid regions, tribal territories were very large, and along the coastal areas, tribal territories were correspondingly much smaller. In general, people held group size relatively constant, and adjusted the size of the territories to suit.<sup>10</sup>

Tribes were grouped together into larger clusters forming cultural blocs. Peterson<sup>11</sup> studied the cultural and natural areas of Australia and found that supra-tribal groups and major drainage systems showed a high degree of correlation. At finer levels of resolution, in areas where there is a network of creeks and rivers, ownership of country tends to flow with the water.<sup>12</sup> Groups who share adjacent junctions on a larger river, or whose countries come together at watersheds or floodouts, share close relations in marriage and trade, and often share a language.

Water, according to Indigenous accounts, does not happen by chance, but rather exists through the creative action of Dreaming beings. The term Dreaming connotes both creation and connection. It refers to the beings and actions that made the world, and it further refers to the continuing process of life's coming forth in the world. It thus references both original and on-going creation. Dreamings created relationships that structure obligations of care, and that constitute webs of reciprocities within the created world. These relationships are localised into countries. A country is small enough to accommodate face-to-face groups of people, and large enough to sustain their lives; it is politically autonomous in respect of other, structurally equivalent countries, and at the same time is interdependent with other countries. Bonds 'of mutual life-giving', to use Elkin's elegant term, are focused in country, and countries are connected through Dreaming tracks to form regions.<sup>13</sup> Rockholes, soaks, wells, rivers, claypans, water-holding trees, billabongs, springs and other localised water sources form part of the subsistence geography of country and almost invariably part of the sacred geography as well. The tracks and sites of Dreaming significance link surface, subsurface and aerial sources of fresh water. Every country has its own permanent and ephemeral waters. No country is without water as that would leave people dependent on others, but in many areas, of course, water is scarce.

Water in Aboriginal Australia exists within a system of rights and responsibilities that is usually referred to as ownership. Groups of people belong to and 'own' their country, including their water. Rights and responsibilities are vigorously defended. In the words of Marcia Langton:

individual rights and responsibilities arise from the wider mytho-geographical bodies of knowledge, and ... these rights and responsibilities of individuals in relation to ... waterscapes ... are jural in nature.<sup>14</sup>

Exclusive rights to waterscapes are a key factor in inhabitation of country. On the one hand, countries were under the control of the people who belonged there and who, through creation, bore responsibility for the country and its living things, including

water. Their on-going subsistence depended on control of resources, and this is a matter of life and death. For example, one cannot plan to rely on a certain place that is a source of fresh water, only to arrive and find that somebody else has used it all up. Use and access rights must exist and be enforceable. Control of knowledge was, and is today, a key form of defense. 'Intellectual property' rights to water knowledge constitute a significant domain of territorial integrity and thus of sustainable inhabitation.

On the other hand, flexibility is also a key factor. Indigenous people's main adaptation to uncertainty was to develop social ties that enabled people to move to resources as they became available. The general rule, articulated in simple and eloquent terms, was and is: 'always ask'.<sup>15</sup> The rule identifies the right of the owners of country to say yes or no; 'always ask' articulates owners' responsibility in making managerial decisions about the use of their own country.

The social organisation of sharing was utterly essential. Gould's work on risk and sociality offers important insights. He maintains that desert people had to 'chase rain in order to live'.<sup>16</sup> One of their major strategies, therefore, for 'minimizing the risks in an inherently risky environment is to establish and maintain multiple, long-distance kin sharing networks that enable people to move freely to better favored areas during drought'.<sup>17</sup> A strong effect of this system is that while asking is obligatory, there are also intense pressures toward sharing, not least of which is the knowledge that those with plenty today will be supplicants themselves in the future. In discussing the constant sharing behaviour and the networks of obligation, Gould concludes that 'sharing relationships among these people are too important to be left to sentiment'.<sup>18</sup> Sharing is encoded and embedded within all social relations; trade, marriage, ceremony and others. The code is reciprocity. Not only is the precept 'always ask' essential; so too is the fact that people are almost never refused.<sup>19</sup>

One aspect of the genius of this system of countries is to give people inalienable rights without inhibiting their flexibility. Social relations cross-cut the boundaries of rights without obliterating or undermining them.

### **Water as responsibility**

Indigenous Australians learned to understand water in order to adapt themselves to it – to its unpredictability, its capacity to support life, its dangers, and its hidden places. Not only did they acquiesce and adapt to the water conditions of the Australian continent, they also enhanced the capacity of water to sustain life. Acceptance of the water conditions of any given territory was and is an active way of working with water's own action. Practices of care involve relationships between people, water, and all the living things that depend on water, and thus entail ethics.

There are many, many references to the care that people took, and where possible continue to take, to ensure that their water sources remain as beneficial as possible. Some actions sought to direct water's flow, as with the fishing stations in the Barwon River at Brewarrina, or the eel weirs in Victoria.<sup>20</sup> Other actions to direct flow include dams constructed to direct water into grasslands. Similar action involves wells which enable permanent access to water. The *mikiri* wells of the south-east Simpson Desert, for example, were kept clean and clear; the sides were propped up with wooden structures.<sup>21</sup> In many accounts, the care and cleaning of waterholes is linked to ritual. Some of the ritual is secret and sacred, and thus is not available for discussion.

Pat Lowe vividly describes the work of digging out a waterhole:

At the waterhole, the men are still digging. Already they have reached damp sand. There is only enough room in the deepening hole for one to work, so they take turns on the shovel. As the pit sinks lower and the man digging has to throw sand upwards, he abandons the shovel and digs with a billy can... Now the sand in the bottom has turned to grey mud.

The man in the pit squats down and, after consulting those who know this place the best, scoops a smaller, deeper hole to the east of his feet: the Ngapa Mil, or eye of the jila. Water starts to seep in. The sides of the inner well are crumbling, and the man calls for [hunks of desert grass] to line the mil [eye]... The well man curves the grass into an arc and, stooping, presses them into the seepage hole. Everyone else stands on the heaped sand above, watching the water slowly rise. A cup is called for, and a woman produces an enamel mug. The man below tosses out the first scoops of water, dark and murky. When the cleaner water has seeped up to replace it, he swirls away the surface scum and immerses the mug. This second water, still only inches deep, is grey and gritty, but he drinks deeply, refills the mug and passes it up. The water goes from hand to hand. It is cool and fresh and tasting of the earth.<sup>22</sup>

Other forms of life enhancing care include protection for plants and animals. Peter Latz, a botanist who has carried out extensive work in Central Australia, notes that the most sacred/protected places are likely to be places where a number of Dreamings meet up or cross over. He describes them this way:

... there's a lot of dreaming trails which cross over, these are really important places. They are so sacred you can't kill animals or even pick plants. And of course you don't burn them. You might burn around them in order to look after them.<sup>23</sup>

Most of the 'really important places' focus on water. The restraint enjoined as respect for sacred sites enhances the capacity of such sites to serve as refugia in times of drought.<sup>24</sup>

Some of the most vivid evidence of Indigenous curation and protection of water comes through contrast with settler profligacy. Peter Latz has had the opportunity to study the process in Central Australia, and he states bluntly:

The Arrernte people ... have important sacred sites where lots of Dreamings meet up with each other. These places were like ... the biggest, the most wonderful cathedral in Australia. And, of course, they were also the best places for recolonisation. There's a place called Running Waters, the best waterhole in central Australia, which was an absolute sanctuary. The waterhole runs for about four miles. Pelicans breed in it. It is now utterly stuffed! It was the very first place that white people came in and unwittingly put all their cattle. In other words, it's as if the whites came up here, found the cathedral and then went and shat on the altar!<sup>25</sup>

Similarly, Veronica Strang states that on the west coast of Cape York mining is having large impacts on water.<sup>26</sup> Aboriginal elders evaluated the pollution of water caused by mining companies as 'a poisoning of the rainbow – a flow of alien substance into the lifeblood of the community'.<sup>27</sup> One of the elders explained that:

pollution from upriver is seen as potentially disastrous not only to resources, but "everything":

"... It will all be gone, finish. All the fish, all the animals, everything finish."<sup>28</sup>



### Water as connectivity

Right across Australia water is part of the sacred geography of people's homelands. Water knowledge is integral to the broader domain of ecological knowledge, and water is invariably linked to life. 'Living water' is the term frequently used to describe permanent waters. It conveys the sense of water having its own life, and also of offering life to others. Human understandings of water elaborate both aspects: water in its own presence or absence, and water in its connectivities across land forms, between earth and sky, and among living things.

The Rainbow Serpent is the major connecting figure. In most parts of Australia Rainbow Serpents (and/or other large snakes) are regularly associated with permanent water and with connections between the subsurface, surface, and aerial waters.<sup>29</sup> Everywhere they are dangerous, and everywhere they are life-giving. In many areas subsurface water is said to be situated along the tracks of the giant snake.

In western New South Wales, for example, in the country of the Ngiyampaa people, Steve Meredith spoke about *Wawi*, the Rainbow Serpent:

This country was made by the ancestors. *Wawi* the Rainbow Serpent came up through the springs, he came from Nakabo springs, Ngilyitri country. Wherever he travelled he left ochre to show where he had been. The springs were entry and exit points. He came out of the earth, travelled along its surface, and then went back to the earth. *Wawi* travels, and is still there. We know he's still there.<sup>30</sup>

The Rainbow Serpent is associated with rain – the action that brings the fresh water down to earth. In the Victoria River valley of the Northern Territory, for example, the Rainbow Serpent rises up out of the permanent waterholes and starts travelling across the sky with the clouds that contain and release water.<sup>31</sup> Rain water replenishes springs, rivers and underground water, people say, generating life and growth. For this and other reasons, people say that water is life.

One set of connectivities articulated by the Rainbow Serpent is thus the flow of water from inside the earth, across the surfaces, into the sky and back to earth. On the face of it, Rainbow Serpent connectivities parallel ecological analysis of water dynamics and energy flows. However, the internal forces and sources of water that the Rainbow Serpent is, and accesses, are deep matters in Indigenous metaphysics.

As is perhaps well known, Aboriginal philosophy does not work with a nature/culture binary; humans and non-humans share a moral order both in consequence of Dreaming creation, and in the on-going kinship between humans and other species, and other entities such as sites. Water pervades systems of kinship: many Dreamings that are clan or 'social' totems relate specifically to water. Water snakes, for example, and fish, crocodiles, and many others are kin within the totemic system. In addition, water is part of larger moiety systems – light and dark rain, for example, or Rainbows, flying foxes and catfish.<sup>32</sup> Fiona Magowan draws on her extensive learning with Yolngu people to explain the deep connectivities and co-substantialities between water and people:

If flowing water carries "feelingful" emotion it is because the aqua-aesthetics of Yolngu ancestral waters embody identities and personalities. Where these waters come together, an interaction of different personalities is implied in their ebb and flow. And a conjunction of personalities is also a conjunction of groups and kinship relations. Each water has its own flavour, design, and temperament held in its names, which are ritually intoned. These colors and tastes change as one water meets and mixes with the next. Waters that relate as mother/child or

grandmother/granddaughter come together with the possibility of reproducing ancestral knowledge and lineages in their flow.<sup>33</sup>

She asserts that in Yolngu metaphysics 'waters have moral, social, and spiritual consequences'.<sup>34</sup>

### **Water is life**

Stephen Muecke ventures a generalisation with which I would agree: Aboriginal philosophies 'are all about keeping things alive in their place'.<sup>35</sup> To his point about life in place, I would want to add the element of time: keeping things alive in their place requires continuity through time – whether that be generational time, seasonal time, or broader spans of ecological time. In taking the analysis further, I suggest that water materialises and articulates two aspects of the continuity of life in place on earth – its locatedness in country and its continuity in time. I am not seeking to establish abstract or mathematical qualities of time and space; rather I am looking to how water materialises both flux (time) and enduring stability (place).

An excellent example is the life-giving sites known in the literature as 'totemic wells'. Wells, or springs, hold future generations of people. A 'spirit' emerges from the clan water, is nurtured in its mother's womb, is born into the clan, and at death the spirit is returned to the clan well. Allan Marett offers a moving explanation of the process in his discussion of funeral songs in the Daly River region of the NT:

Frank [Dumoo] and I discussed the way in which the ceremony had ensured the continuity of his niece's existence, by allowing her to transform from a living human into a Walakandha [deceased ancestor] and thus to begin a journey back to the life-center from which she had originally emerged as a baby-spirit. Like every Marritjevin, she traced her existence to an eternal center of life-giving power in her country, ... at which seminal power had been deposited at the beginning of time by a Dreaming ancestor. After her death, the ... ceremony provided the means for her to cross over the barrier between life and death and ... then – in a journey which mirrored that taken during life – she travelled backward from death, through adulthood to childhood, eventually to re-enter the... totemic well from which ... she originally sprang.<sup>36</sup>

The relationship between person and clan well is described eloquently by Mr Bulun Bulun of the Ganalbingu people of the Arafura wetlands in Arnhem Land. He speaks of the Ral'kal (sacred waterhole):

Ral'kal translates to mean the principal totemic or clan well for my lineage. Ral'kal is the well spring, life force and spiritual and totemic repository for my lineage... It is the place from where my lineage of the Ganalbingu people are created and emerge. It is the equivalent of my 'warro' or soul.

Djulibinyamurr is the place where not only my human ancestors were created but according to our custom and law emerged, it is also the place from which our creator ancestor emerged.... Djulibinyamurr is my Ral'kal, it is the hole or well from which I derive my life and power. It is the place from which my people and my creator emerged.<sup>37</sup>

There is a patterned connectivity here that can be recognised in several domains and thus is integrative of domains. Rainbow Serpent action shows one such pattern. It stays in its permanent waterholes or underground tracks, and it emerges to bring rain to nurture life. It travels in the sky, and it returns to the ground in patterns of connectivity. This pattern replicates itself; it characterises the design of the human life,

and the design of Dreaming creation. The dynamics of emergence and return, and the centrality of water in both holding life in place and sustaining life in motion, constitute a patterning of time, place, motion and return.

Water *is* life, Indigenous people keep telling us. According to Yolngu elders of coastal Arnhem Land, 'In the Yolngu world view, water is the giver of sacred knowledge, all ceremonies and lands. Whether it's fresh or salt, travelling on or under the land, or in the sea, water is the source of all that is holy'.<sup>38</sup>

In answer to the question of whether love of life includes love of water, an Indigenous response might regard the question as a bit silly to begin with, since water is so central to so much more than might be implied by the term 'love'. The late David Burrumarra was characteristically both forceful and enigmatic. He asked: 'What supernatural entity or entities allow "a tree to take water inside itself from the leaves and roots and to flourish? We know this is where the tree gets its water but we don't see it happening. We only hear about it. *Motj* is the water of life. It is our word for God"<sup>39</sup>.'

### Conclusion

The UN has issued a directive that is actually a huge challenge: to protect water as a social and cultural resource, not just as a commodity. Indigenous water philosophy offers a broadly life-affirming account of water that is admirably suited to this continent, having been developed over millennia of interaction with water. The challenge, from both the UN and from Indigenous people, is to go beyond our contentious but ultimately comfortable categories of resources and rights. A first step is to situate water within a realm of biophilia, for it is surely clear that those who love life must love water. Perhaps it is finally time for non-Aboriginal Australians to develop a water philosophy that will hold their lives, too, in patterns of connectivity.



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<sup>4</sup> Macer, Darryl & Masuru Morita (2002). 'Nature, Live and Water Ethics', *Eubios: Journal of Asian and International Bioethics*, 12: 82-88.

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([http://www.atsic.gov.au/issues/Indigenous\\_Rights/Indigenous\\_Rights\\_Waters/docs/layout\\_papers.pdf](http://www.atsic.gov.au/issues/Indigenous_Rights/Indigenous_Rights_Waters/docs/layout_papers.pdf)): 45.
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- <sup>18</sup> *Ibid*.
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## Academy News

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### Research Program

#### ARC Linkage-Learned Academies Special Projects

In November 2004 the University of NSW Press published the book *Sustainability and Change in Rural Australia* edited by Chris Cocklin and Jacqui Dibden. This work is the result of an ARC-funded Special Project in 2001 which researched *The Sustainability of Australian Rural Communities*. 'By addressing themes such as social and economic change, government policy and gender relations, the volume tackles the thematic complexities of sustainability. At the heart of this discussion lies a desire to understand how small rural communities have survived in the past; how they are shaped by environmental, economic and social factors at present; and how these factors will impact on their survival in the future.'

#### ARC Research Project 2004: *What Is To Be Done With Management Ethics? Addressing National Needs and Priorities.*

A Symposium on *What is to be done with Management Ethics* will be held at the University of Technology, Sydney on 16 December 2004. In addition to presenting a paper as a contributor, a public lecture on *The Globalisation of Nothing* will be delivered at UTS on 15 December by acclaimed author and sociologist George Ritzer.

Professor Ritzer will present a provocative and insightful look at the way that globalisation has radically changed the nature of our lives. He will chart how the world is increasingly consuming goods and services that are 'nothing' rather more than 'something'. He claims that the consumption of things that are indigenously conceived, locally controlled and rich in distinctive content is diminishing rapidly. Instead, we consume and increasingly seem to want centrally controlled and conceived goods and services that are devoid of distinctive substance. Troublingly, as we consume more, we feel a sense of loss of meaning amidst the monumental abundance of — nothing. This lecture will provide a stimulating new way of thinking for anyone interested in the business, marketing and social effects of globalisation and offers a rare opportunity to learn from an acknowledged 'modern master'.

George Ritzer is Distinguished Professor of Sociology at the University of Maryland. He is author of many books including *The Globalization of Nothing* (2004), *The McDonaldization of Society* (1993/2004), *Expressing America: A Critique of the Global Credit Card Society* (1995), and *Enchanting a Disenchanted World* (1999/2005).

#### ARC Linkage Learned Academies Special Projects 2005

The research project *Patterns of Population Mobility and Internal Migration in Australia* has received funding of \$100,000 in the latest ARC funding round for Learned Academies Special Projects. The Project Leaders are Peter McDonald (ANU) and Martin Bell (University of Queensland).

### **ARC Linkage Projects 2005**

*The Social Sciences and the Making of Postwar Australia* a research proposal submitted by Chief Investigators, Professor Robert Pascoe (Victoria University of Technology) and Professor Stuart Macintyre (University of Melbourne) with Industry Partners the National Library and the Academy, has received funding support of \$31,571 in 2005 and \$32,730 in 2006.

### **Workshop Program**

The Workshop Committee met on 16 July 2004 at Flinders University in Adelaide to decide on the 2005-2006 program of workshops. To date, the Committee has received 14 applications for consideration, and so far the following applications have received Committee approval.

*Security, Democracy and Networks*. Convenors: Dr Jenny Fleming and Dr Jennifer Wood (RegNet, Australian National University).

The workshop will explore the dilemmas posed for policing and security by the shift to network governance; that is, the shift from state provision of security to its provision by many institutions in the public and private sector. The main dilemmas are competition versus cooperation, accountability versus efficiency, openness versus closure, and governability versus flexibility. The workshop will examine the effects of these dilemmas on several security networks, consisting of: private security; public policing; private military organisations; national and transnational public policing; and international development agencies. The workshop will bring together academics and practitioners concerned with the efficiency, effectiveness and regulation of the network governance of policing and security. Participating as well will be specialists in policing and security as well as practitioners involved in community policing, domestic security and international peace building and law enforcement assistance in the Asia-Pacific Region.

*The 2004 Australian Election*. Convenors: Professors Marian Simms (University of Otago) and John Warhurst (Australian National University).

This workshop is the latest in a series of post-election workshops that ASSA has supported and will continue to support for the next two elections. The workshop will bring together a team comprising academics and practitioners to present and debate their points of view about the national election. The unique value of the project is that it provides useful synergies between town and gown, and facilitates practitioners providing important data, eg, their own quantitative and qualitative survey research, and receiving feedback from academics about the relevance of party research in terms of intellectual agendas.

*Publicising Performance Data on Individual Surgeons: The Ethical Issues*. Convenor: Mr Steve Clarke (Centre for Applied Philosophy and Public Ethics, Australian National University).

An important development in health care, over the last 15 years, has been the publication of performance information on individual cardiac surgeons. This information has been publicly available in New York State and Pennsylvania for over a decade, and is being made available in the UK this year, in the wake of the Bristol Inquiry into paediatric cardiac surgery deaths at the Bristol Royal Infirmary. A considerable amount of empirical research has been carried out on aspects of the

collection and release of surgeon-specific performance data, but there has so far been very little analysis of these developments from an ethical perspective. There are a number of ethical issues raised by the publication of this sort of information. These include issues of patient autonomy, informed consent and the comprehension of risk information, the effect of publication on the quality and on the distribution of surgical care, and the importance of transparency and accountability for surgical outcomes. This workshop will consider whether, in light of these considerations, making surgeon-specific performance information available to the public is ethically justified. The workshop will also aim to consider whether Australia should adopt similar public disclosure processes in medicine. Papers will be presented that take bioethical, philosophical, sociological and practitioner points of view.

*Reinventing Gender Equality and the Political.* Convenors: Dr Toni Schofield (University of Sydney) and Associate Professor Carol Bacchi (University of Adelaide).

By the late 1990s, despite advances in the conceptualisation of gender and its relationship to the state and democratic participation, the specific dynamics by which gender operated in public institutions were not clearly understood. By 2004, however, Australian social researchers have explored this problem in considerable depth and from diverse perspectives. Most of this work has been funded by large Australian Research Council grants, often in combination with funding from "industry partners" through the Council's SPIRT and Linkage programs. The proposed workshop will present and discuss the findings of this recent scholarship, critically assessing its implications for the development of Australian public policy that advances gender equality and democratic participation.

The workshop will provide a forum for active social science researchers - both established and early-career - to: present and discuss recent research on advancing gender equality and democratic participation; identify and report on strategies from this research that governments could adopt in advancing the goal of gender equality and democratic participation; and, identify priority areas and directions for further social research in the field.

#### **Forthcoming Workshops in the 2004-2005 Round**

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

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

#### **Workshop Publications**

Amarjit Kaur and Ian Metcalfe (eds), (2003). 'Globalisation and Development in Bangladesh'. *South Asia*, 26, 3. A publication outcome from the 2002 workshop: *Globalisation, trade liberalisation and economic growth in Asia: Should labour and environmental standards be part of the equation? The case of Bangladesh.*

- Dr Tamara Jacka, Convenor of the 2003 workshop *Gender, Socialism and Globalisation in Contemporary Vietnam and China*, reported that some of the workshop papers appeared in a special July 2004 issue of *Asian Studies Review*, 'Engendering postsocialism in Vietnam and China'.



- Marian Sawyer and Barry Hindess (eds) (2004). *Us and Them: Anti-Elitism in Australia*, Bentley, WA: API Network. Book from the 2003 workshop 'Us and Them: Anti-Elitism in Australia' (a review appears in the Books section of this issue).

## International Program

### Australia-China Exchange Program

The Chair of the International Program Committee, *Leon Mann* met with *Dr Huang Ping*, Director-General, Bureau for International Exchanges Chinese Academy of the Social Sciences (CASS), *Professor Zhang Youyun*, Chief of the American and Oceanian Division, Bureau of International Cooperation, CASS, and *Ms Shi Xuehua*, Program Officer of the Bureau of International Cooperation in Beijing on 11 August 2004. The purpose of the meeting was to explore ways of strengthening the CASS-ASSA exchange program with a view to developing stronger ties and a more productive partnership built on joint research projects and related activities involving early career researchers.

Dr Ping identified three research priorities of great interest to CASS: sustainable development; good governance; and the development of opportunities for younger social scientists to develop skills and capabilities in social science methodology.

■ *Professor Stephanie Fahey*, Director, Research Institute for Asia and the Pacific, University of Sydney has been nominated for support under the exchange program in 2004-05 for a visit to China to undertake research on the impact of globalisation on urban Chinese youth with specific emphasis on attitudinal change and the role of new technologies. The purpose of the visit is to conduct preliminary research and to set up a collaborative research project with colleagues from the Institute of Sociology at CASS.

■ *Dr Susan McGrath-Champ* undertook an Australian-China Exchange for two weeks in Beijing from 14 June 2004. The purpose of the Exchange was to explore how foreign firms manage the performance of international assignees (expatriates) in Australian and other foreign ventures operating in China. In conjunction with a colleague from Bond University (Dr Xiaohua Yang) and a Research Fellow of the Chinese Academy of Social Sciences (Professor Rongping Kang), Dr McGrath-Champ conducted research interviews with international assignees (expatriate managers), and other managers to uncover how firms assess the performance of expatriates and how this is used to manage individual performance and the venture outcomes. The interviews also examined related aspects such as training.

A paper on the research findings, 'Performance Management and Cross-Cultural Training in Australian Firms in China', was presented at the annual conference of the Australia-New Zealand International Business Academy in Canberra, 5-6 November 2004. The paper confirmed that, amongst Australian firms, performance management is less well developed in small, newly internationalising ventures than in ventures established by larger, more internationally established firms (though even in the latter methods were not well developed) and highlighted the lack of connection between firms' training activity and performance management.

The collaboration, network of contacts, local expertise and language assistance provided by the Chinese Academy was invaluable. The research established the foundations for a larger-scale study. This is Susan's second visit to China, her first to Beijing, an impressive city which blends the old and the new dimensions of China in an intriguing manner.

### **Australia-Netherlands Exchange Program**

*Dr Peter Gesner*, Senior Curator (Cultures and Histories), Museum of Tropical Queensland was supported to undertake research in the Netherlands under the exchange program in October 2004. His research examines archival material relating to the arrival and sojourn at, and passage through, VOC settlements in Timor and Java of the survivors of HMS Pandora in 1791 and VOC archival material relating to treatment at Timor and Batavia hospital and the survivors' subsequent passage to Europe via Capetown on VOC vessels.

#### *Visit Report*

My visit to the Netherlands was very useful. I visited the Netherlands Institute for Ship Archaeology (NISA) (in Lelystad) which is a world class facility if I ever saw one. It is extremely impressive as visitors can view all collection items if they choose. It is organised as an open facility allowing visitors to observe 'behind-the-scenes' activities (conservation work) as well as view displays and the entire archaeological collection NISA accommodates. The store is organised as a walk-through exhibition.

I also delivered two lectures - one to my peer group at the Rijksinstituut voor Oudheidkundig Bodemonderzoek (ROB) head office in Amersfoort and another to an undergraduate archaeology class at Leiden University. I was invited to do so by Dr Thijs Maarleveld who is the Head of Maritime Heritage at the ROB as well as a maritime archaeology lecturer at Rijksuniversiteit Leiden (RUL). I made use of my visit to discuss with Dr Maarleveld - as well as with one of his colleagues (Dr Diederik Meijer) - the potential to offer internships to RUL archaeology students who may want to spend some time in Australia (eg, at the Museum of Tropical Queensland) assisting with the processing and interpretation of the Pandora collection.

I spent the remainder of my time in The Hague at the Royal Library (perusing newspaper collections from 1792) and at the National Archives where I researched primary source material relating to the transit through Dutch East India Co (VOC) settlements and on VOC vessels of HMS Pandora wreck survivors. As a result of my visit I feel fairly confident in saying that very little substantive information remains to be found in the Royal Archives relating to the Pandora wreck event; Dutch newspapers from 1792 do not appear to have specifically reported the arrival in Holland and transit through Dutch ports of Pandora seamen, although I did find a report of the September 1792 court martial (and subsequent execution) of the Bounty mutineers who were brought back to face British justice by the Pandora survivors.

Two Australian scholars were nominated for support under the program in 2004-05:

*Dr Sonia Mycak*, Australian Research Fellow of the Australian Research Council, Department of English, University of Sydney (14 days in November 2004) who is participating in the 6th Conference ESA Research Network for the Sociology of the Arts, Rotterdam, and as a Visiting Scholar at Tilburg University hosted by Kees Van Rees, Tilburg University, (Marketing and Sociology of Books, Faculty of Arts) where

she will undertake research and give lectures on *The Postwar Development of Australian Literature*.

*Dr Jeffrey Neilson*, Postdoctoral Research Fellow currently employed on an ARC research project in the School of Geosciences, University of Sydney (May 2005,) will be undertaking research on the historical geography of the South Sulawesi coffee industry. He has also proposed delivering a lecture on the importance of knowledge concerning historical geography for the establishment of geographical appellations and quality constructions more broadly involving the presentation of the Sulawesi coffee industry as a case-study.

Visitors from the Netherlands for 2004-05 have been nominated by the Royal Netherlands Academy of Arts and Sciences. They are:

*Dr HJ Hospers*, Associate Professor and Director of Studies, Faculty of Psychology, Maastricht University who will be hosted in December by Dr P van de Ven, National Centre for HIV Social Research, University of NSW where he will be undertaking collaborative research on HIV/AIDS-related risk behaviour; starting cooperation on the development of effective online HIV-preventive intervention; and exploring the possibilities for PhD-student exchange on internet studies.

*Dr Jan de Jong*, Associate Professor in Occupational Health Psychology, Utrecht University who will be hosted in January by Professor Tony Winefield, School of Psychology, University of South Australia. His visit is part of the ARC Linkage International Australia-Netherlands project on Work and Stress research and ASSA will part-fund the visit with the remainder being provided by the ARC. During his visit, Dr de Jong will finalise a supervised PhD project; commence a new research project eg Adelaide Police Officers; and complete papers for publication.

### **Australia-India Memorandum of Understanding**

ASSA has been actively engaged in discussions with the Indian Council of Social Science Research (ICSSR) to establish an exchange agreement to support the development of joint research projects and academic exchanges. At a meeting of the Academy's International Program Committee on 16 September, it was agreed that the memorandum of understanding prepared by both sides, would be signed with commencement of an exchange program in 2005. On 20 October ICSSR sent notification of intention to move immediately to a signed exchange agreement and implementation in 2005.

### **AASSREC**

The Executive of the Association of Asian Social Science Councils met in Manila on 8-9 October 2004. Fay Gale attended the meeting which was held at the offices of the Philippine Social Science Council. The 2005 AASSREC Conference is scheduled to be held in Delhi from 3-6 February 2005. The theme for the conference will be *Social Issues of Unemployment Following Development in Asia*.

### **UNESCO Social Science Network**

ASSA has continued as a member of the UNESCO Social Science Network. The Australian National Commission for UNESCO provides annual grant fund assistance for a range of projects. Successful applications for funding support in 2004-05 include

funding support for a workshop proposal from Professor Dennis Altman, 'HIV Aids: State Rivalry and Human Security'.

### **Australia-France Exchange Program**

Applications for the 2005 French Exchange program closed on 30 June. The French Embassy received 11 applications across several disciplines, including economics, education, anthropology, linguistics, sociology and history. At a meeting with the French Embassy on 16 November the list of successful applicants was agreed. Further details will be reported in the next issue of *Dialogue*.

## **Policy & Advocacy**

### **Recently published policy paper**

*Social Science Research and Public Policy: Narrowing the Divide*, by Professor Meredith Edwards. *Occasional Paper* 2/2004.

The paper addresses some of the difficulties faced in translating social science research-based policy advice to Government as well as communicating Government policy needs to researchers. The paper received a two page exposition in the October edition of *The Public Sector Informant*, published by *The Canberra Times*.

### **Forthcoming Occasional Paper**

*Evidence into Policy: What works in Ageing?*, by Professor Helen Bartlett.

The paper will continue on the theme of the previous *Occasional Paper* by examining the relationship between social science research and policy and its processes in the context of an ageing Australia.

### **Workshop Program - Policy Outcomes**

Policy papers from the Workshop Program are now being published in the new policy section of the ASSA website: [www.assa.edu.au/policy/](http://www.assa.edu.au/policy/). The papers are intended to be summaries of social science research findings that open up policy options and debate, and in some instances, make useful policy recommendations. So far, policy reports from the following workshops are available:

- *Portrait of a Nation 2003: Reporting on the inaugural Australian Survey of Social Attitudes*. Five papers have been submitted: Knowing your genetic information - Freedom, burden or power?; How do Australians feel about their work?; What makes an Australian family?; Family and work: Policy implication; Where to for the welfare state? Attitudes to spending, welfare and social services.
- *Australian women facing the future: Is the Intergenerational Report gender neutral?*
- *Evidence into policy: What works in ageing?* The Convenor, Helen Bartlett, will write an *Occasional Paper* based on the workshop outcomes.

## Reports from Workshops

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### Participation and Governance in Regional Development

*Robyn Eversole and John Martin*

The national workshop on 'Participation and Governance in Regional Development' took place at the Hamilton, Victoria campus of RMIT University from 30 June to 2 July 2004. The workshop was sponsored by the Academy of Social Sciences in Australia and convened and hosted by RMIT University's Centre for Regional and Rural Development. It brought together a diverse and distinguished group of social researchers from across Australia to a small rural town, to dialogue with each other, with policymakers, and with local community members about the role of people and their communities in regional development processes.

At the cutting edge of current development theories internationally, questions about participation and participatory governance are being asked around the world. Increasingly, people and institutions are demanding that development – planned social and economic change – be negotiated rather than imposed, that it promote human wellbeing and equity rather than merely economic efficiency, and that it acknowledge cultural diversity. 'Participatory development', 'community driven' solutions, consultations with stakeholders, and devolution of control to local levels, are all attempts to encourage a more democratic approach to development in which many voices and interest groups are represented. Yet how can real, rather than nominal, participation be defined, encouraged, and institutionalised? And how can the local, micro focus of much of participatory development gain voice and influence in the context of national and global level social and economic institutions?

The workshop, which attracted delegates from every Australian state and the Northern Territory, illuminated how these international trends toward participatory development and participatory governance are currently reflected in the context of Australian regional development policy and practice. The scope of the workshop was intentionally broad: delegates represented a wide variety of social-science disciplines, and their contributions ranged from macro-level policy reflections to case studies of specific, practical regional development interventions. While some of the delegates struggled with this diversity, it became clear that the issues we were considering reached far beyond our own disciplinary boundaries or our specific sectoral interests. We experienced both the concrete obstacles of language in cross-disciplinary work, as well as the insights that this cross-disciplinary sharing brought to enhance our understanding of the issues.

The workshop was officially opened by Professor Lois Bryson, Director of the Research Centre for Gender and Health at the University of Newcastle and an Academy fellow. In addition to providing some illuminating opening comments in response to the draft workshop papers and the workshop themes, Lois participated actively throughout the workshop, which benefited greatly from her insight. The program was divided into five themed sections of presentations, two workshop discussion sections, and a community forum. This format worked well, providing focus to the diverse range of contributions and opportunities to define and redefine, in a participatory fashion, the key themes represented by delegates' work. In the end, the workshop became an organic process in which the broad invitation to delegates to explore participation and governance issues in the context of Australian regional

development became an opportunity to distil a wide range of experiences from many disciplinary backgrounds into common key themes and issue-areas.

The workshop's five themed sections included a total of eighteen papers, all on key regional development topics such as natural resource management, employment generation, small-town survival, and social equity, demonstrating a common concern with how people's participation can be defined, encouraged, and institutionalised into regional development policy. The first session, 'Defining Regional Development and Creating Change', included papers by Ian Falk of Charles Darwin University, Fiona McKenzie from the Victorian Department of Sustainability and the Environment, Patrice Braun from the Centre for Regional Innovation & Competitiveness at the University of Ballarat, and Robyn Eversole from RMIT's Centre for Regional and Rural Development. The second session, which focused specifically on 'Participatory Natural Resource Management', included both policy and practical contributions from a range of distinguished academics from Queensland, Tasmania, Western Australia and Victoria. These included Brian Head from Griffith University, Frank Vanclay and Andrew Craig from the University of Tasmania, Susan Moore from Murdoch University, and Ruth Lane from RMIT University.

The workshop's third session focused on 'Local Capacity and Local Perspectives On Regional Development', with contributions from Andrew Beer of the School of Geography, Population and Environment at Flinders University (on the performance of regional economic development agencies); Helen Ross and Fiona McCartney from the School of Natural and Rural Systems Management, University of Queensland (on rural women's insights into sustainability issues); Paul Collits of the NSW Department of State and Regional Development and AJ Brown from Griffith University (on local government and regional governance); and Kevin O'Toole from Deakin University (on changes in Victorian local government and governance). The fourth session focused on 'Population and Infrastructure Issues', with contributions from Gordon Forth (Deakin University) and Ian Gray (Centre for Rural Social Research, Charles Sturt University). Finally, the fifth session focused on 'Empowerment and Equity in Regional Development' – themes that ran through the workshop as a whole, but were particularly captured in Margaret Alston's work on drought and social exclusion, Sherry Sagers' work on Indigenous participation in community development, Julie Grant and Al Rainnie's work on women in regional development, and Sue Kilpatrick and Helen Bound's study of training for workers in rural seasonal industries.

The two workshop discussion sessions provided an opportunity to reflect on the papers and their key themes within the context of the workshop as a whole. The insight of delegates in these sessions allowed the workshop convenors to refine the workshop's key messages, consider the appropriate audience for these messages, and craft the framework for a book to draw the workshop contributions into a cohesive whole. As the workshop dealt first and foremost with regional development, the decision was made to focus the resulting book around the four key regional development issue-areas that arose from the workshop process, namely: 'Creating Economic Opportunities', 'Managing Natural Resources', 'Acknowledging Diversity and Exclusion' and 'Linking Local Issues and Larger Contexts'. All these regional development issue-areas are discussed through the lens of participatory development and participatory governance. During the workshop, delegates were given extensive written feedback from peers, and after the workshop, specific guidance from the convenors on revising their conference paper as a book chapter.

Possibly the high point of the workshop was the community forum held on the afternoon of the second day. This was, in essence, an excellent opportunity to test in practice some of the rhetoric of community participation. Three non-academic residents of the local region with significant experience working in community sectors were invited to participate as delegates for the entire workshop, and to present their response and analysis formally to the afternoon community forum. Invitations to attend this forum (which included a light lunch and afternoon tea) were distributed widely in the local region around Hamilton, and a number of community delegates from a range of sectors attended. The insight demonstrated in the three talks by community representatives, and the comments and discussion from the forum participants as a whole, provided an important opportunity for dialogue that not only crossed academic disciplines, but also brought in non-academic perspectives. The community forum provided an excellent learning opportunity for all concerned.

In conclusion, the convenors were very pleased with the result of the workshop on Participation and Governance in Regional Development. Post-workshop feedback from delegates has been very positive, and the process of preparing the book has benefited greatly from the workshop process and the input of our colleagues. The process of assembling the manuscript is on schedule, and the goal is to publish *Participation and Governance in Regional Development* in 2005, as a book that makes a significant and timely contribution to the regional development literature.



**Australian Women Facing the Future:  
Is the *Intergenerational Report* Gender-Neutral?**

**Christina Lee**

This workshop was held at Customs House, Brisbane, on 1-2 July 2004. Sponsorship from the Academy of Social Sciences in Australia was supplemented by funding from the School of Psychology, the Faculty of Social and Behavioural Sciences, and the Faculty of Health Sciences, at the University of Queensland.

The *Intergenerational Report* (Commonwealth of Australia, 2002) and the more recent *Responding to Australia's Demographic Challenges Report* (Treasury, 2004) have provided a background for discussions about the socio-demographic future of Australia. Predictions for an ageing population and a decreasing proportion of Australians of working age, and the economic impact of these changes, have been accompanied by strategies for developing economic sustainability. These issues - both the demographic changes and the policy reaction to them - are unlikely to be gender-neutral, but the reports make very little mention of gender issues and public debate so far has largely ignored the differential impacts on women and men.

Women are more likely to be out of the labour force than men, take a greater share of responsibility for child-rearing, earn less money when employed, are less likely to have adequate private superannuation, have higher levels of minor physical and emotional morbidity, are more strongly economically disadvantaged by relationship breakdown, are more likely to take on family caregiving and volunteer roles, and can expect a longer old age. Thus, any potential adverse effects of systemic policy changes on those with limited personal resources are likely to impact more on women than on men. Strategic government planning aims to increase the proportion of women in the paid labour force but does not address the social and economic value of women's unpaid contributions to the social fabric, nor the economic effects of these contributions on the individual woman.

This workshop brought together researchers from a range of disciplines including demography, epidemiology, medicine, psychology, public policy, and sociology, to share insights from research and practice. Several large-scale longitudinal studies, including the Australian Longitudinal Study on Women's Health, the Negotiating the Lifecourse Study, and the Household Income and Labour Dynamics in Australia study, were represented in addition to a number of more geographically focused projects.

An overview of projected demographic change and the issues that may arise for women, presented by Christina Lee, was followed by a context-setting presentation from Kathy Mandla of the Queensland Government's Office for Women (representatives of the Australian Office of the Status of Women were invited but were unable to attend). Kathy's presentation outlined the progress made by women in public life and pointed to priority areas in which women continue to face inequity, disadvantage or under-representation. She emphasised the need for policy change to enhance women's abilities to balance work, family and lifestyle, while achieving economic security for the present and for their older age, and in order to increase women's participation in leadership, decision-making and community building.

The rest of the first day was taken up by seven presentations on the relationships between government policy and women's reproductive choices, workforce attachment and economic wellbeing.

Peter McDonald presented an overview of the relationships between employment and welfare policies and fertility at a national level, showing that Australia's policy climate was associated with a lower level of workforce involvement among mothers than is found in comparable countries. Maggie Walter outlined the inconsistencies in current policy regarding workforce attachment among partnered and unpartnered mothers, whereby partnered mothers are encouraged to remain out of the workforce or marginally attached while unpartnered mothers are expected to find more permanent and preferably fulltime employment.

Gillian Whitehouse, presenting data on the low level of workforce involvement among Australian mothers by comparison with other OECD countries, argued that government policies that guaranteed moderate-duration, paid parental leave for all workers, and that mandated the option of returning to permanent part-time employment, would go some way to increasing the proportion of mothers in the workforce. This, she argued, is commensurate with the government's goal of increasing workforce participation and reducing welfare dependence. Glenda Strachan's presentation focused on current work and family policies, and what they actually mean for today's workforce. She concluded that – with little direct government policy control over organisational structures – the majority of Australian employers do



not provide family-friendly options for staff, and that until legislation or corporate culture change, there is little opportunity for employees to negotiate better options.

Diana Olsberg, Deb Loxton and Penny Warner-Smith's presentations all focused on the individual, rather than on structural influences on women's workforce attachment and economic wellbeing, with a focus on economic security in old age. All three painted a relatively bleak picture of what lies ahead for Australian women, suggesting that a high proportion will continue to require financial support in the form of pensions and benefits. Diana Olsberg addressed the issue of superannuation, pointing to a looming crisis for women, whose pattern of intermittent and part-time workforce engagement frequently places structural barriers in the way of accruing adequate superannuation. Deb Loxton addressed the economic implications of divorce and family breakdown for women: with increasing rates of family breakdown and with husbands and wives frequently being in inequitable power relationships, the economic future of women whose marriages break down, especially those who have dependent children, is bleak and their opportunities for self-sufficiency in old age are very limited. Penny Warner-Smith extended this discussion to suggest that middle-aged women are generally ill prepared, financially and emotionally, for retirement. Her analysis showed that 'retirement' is a concept with little meaning for many women, especially for those who withdrew from paid work to take on childrearing and other unpaid family caring roles. For many women, retirement is an empty concept – as children become independent, they find themselves taking on family caregiving roles for husbands and parents, while at the same time contributing to the care of grandchildren.

The second day of the workshop addressed issues of diversity among Australian women, as well as dealing with the unpaid social contributions made disproportionately by women in Australian society. Regarding diversity, the point was made that – given the lack of focus on the needs of women in general in current planning for demographic change – it is hardly surprising that the needs of diverse groups of Australian women have been ignored, but that women who do not conform to 'mainstream' stereotypes may be even more disadvantaged than others. Trang Thomas addressed the particular issues that face women from a range of migrant groups, in dealing with the conflicts between traditional and contemporary expectations for women and family. Ruth McNair raised the particular issues for lesbian women, whose economic security is affected by failure of currently policies to recognise their roles as parents and as members of long-term partnerships. Heather McKay presented data on the health and wellbeing of women who remain childless, showing that they are better educated, more engaged with the workforce, and thus more financially self-sufficient than are mothers at this stage of life.

Belinda Hewitt and Julie Byles continued the theme of diversity, with presentations on the health and wellbeing of women following marriage dissolution and widowhood, respectively. Belinda showed that women who remain permanently separated from their husbands, without divorcing, appear to be in the worst health and poorest financial situation, and emphasised the need for a focus on this neglected demographic group. Julie stressed the ongoing financial stresses of widowhood, which persist despite good emotional and health-related adjustment. With increasing numbers of women growing old alone, these groups of women (as well as the always-single) are neglected by policies which assume that all women live out their lives within traditional family structures.

Susan Feldman and Jeni Warburton combined themes of diversity and of unpaid labour in two complementary presentations. Susan Feldman dealt with the 'hidden'

role of grandmothers in providing social capital, particularly enabling their children to be more economically active by providing childcare and other support, with reference to a study of ageing Jewish Australian women. Jeni Warburton raised the issue of informal volunteer work at the level of community and family, including informal caregiving and assistance of elderly neighbours and disabled community members, pointing out that women from migrant backgrounds, especially those who come from non-English-speaking backgrounds, are most likely to contribute to social capital in this unacknowledged way.

In the final session of the symposium, Beverley Lloyd used qualitative analyses to describe the experiences of young Australian women who combine paid work and motherhood, demonstrating the creative and energy-intensive strategies that women adopt and the varying degrees of success that they are able to achieve in managing the combination and maintaining their own physical and emotional health. Peter Brown's final paper dealt with leisure – after days of discussion of how women could meet employment, financial, family and community needs, this was a salutary reminder of the importance of adequate opportunities for self-care and relaxation in the maintenance of women's wellbeing.

The workshop was characterised by vigorous debate after each presentation and during the breaks. Considerable synergy was created by the interdisciplinary mix and by the mingling of researchers working on different longitudinal projects with complementary methodologies and aims. One outcome of the workshop will be a special issue of the Australian journal *Just Policy*, with Christina Lee as guest editor. This issue is already in preparation and is expected to be published in late 2004 or early 2005.



### **Australian Multiculturalism and Political Theory: Balancing Rights and Responsibilities in a Diverse Society**

***Geoffrey Brahm Levey***

**M**ulticulturalism has been one of the dominant themes of research and reflection in political theory over the last decade. Among other issues, attention has focused on how multiculturalism relates to liberal principles of individual autonomy, toleration, equality, and justice; where, and on what basis, the limits of liberal toleration should be drawn; and the implications of multiculturalism for current and emerging conceptions of citizenship. For the most part, these debates have been conducted at a fairly abstract level or else have been informed by, or applied to, the Canadian, north American and, increasingly, the European contexts. Political theorists (including Australian political theorists) have devoted scant attention to Australia's experiment with multiculturalism (in contrast to their recent attention to Indigenous rights). The workshop on Australian Multiculturalism and Political Theory (held at the University of

NSW, 8-9 July 2004) sought to redress this lacuna. It brought together a group of political scientists, philosophers, legal academics, and sociologists to critically examine two understudied questions: (1) how current arguments and concerns about multiculturalism in political theory bear upon, or might be brought to bear upon, Australian multiculturalism, and (2) how the Australian case might contribute to political thought on multiculturalism more generally.

The workshop was jointly sponsored by the Academy, the Australian Government Department of Immigration and Multicultural and Indigenous Affairs, and the UNSW Faculties of Arts and Social Sciences and of Law. The event was officially opened by Dr James Jupp, Director of the Centre for Immigration and Multicultural Studies at the Australian National University on behalf of ASSA; Mr Benjamin Chow, Chair of the federal Government's Council for Multicultural Australia, who represented the Minister for Citizenship and Multicultural Affairs, the Hon Gary Hardgrave MP; and Professor Annette Hamilton, Dean of the Faculty of Arts and Social Sciences at the University New South Wales. Overall twenty-two scholars participated; two senior officers from DIMIA – Mr Richard Manderson and Mr Tim Kinder – attended as observers. Fourteen papers were presented, organised into seven panels around four themes. Papers were distributed well ahead of the workshop, which allowed a discussant to offer prepared comments after each panel of papers. Proceedings were then opened to general discussion.

Several papers treated aspects of Australian multiculturalism or related policies directly. Several drew on Australian experience or examples to illustrate more general arguments or issues. Some considered the implications of a particular philosophical position for the Australian case.

#### **Situating Australian multiculturalism**

The first panel addressed the theme 'Australian Multiculturalism: Coherent Philosophy or Muddling Through?' and immediately set the tone of lively debate and probing questions throughout the workshop. Professor Brian Galligan and Dr Winsome Roberts (both of the University of Melbourne) presented a critical account of the evolution of multicultural policy, arguing that the policy's progressive extension to Australian national identity and citizenship is ill conceived. This is because multiculturalism misdescribes the Australian situation, since migrants are mostly geographically dispersed and their children are well integrated, linguistically and socially, into the Australian mainstream. If Australian multiculturalism is to have any relevance, they argued, it should be at the level of assisting migrants to integrate. Dr James Jupp (ANU) put an opposing point of view, questioning whether there is any determinate Australian culture and identity to which migrants could integrate. According to Jupp, critics of Australian multiculturalism also misunderstand it when they worry that it endorses cultural pluralism or exotic cultural practices at odds with liberal norms. While multicultural policy developed pragmatically rather than on the basis of an explicit ideology, and thus reflects the usual tensions and compromises in all public policy making, it has always been informed by an underlying commitment to liberal individualism and democratic institutions.

#### **Liberalism and diversity**

The next two panels explored the relation between foundational liberal principles and the recognition of cultural identity and difference. Professor Chandran Kukathas (University of Utah) presented a useful typology of possible political responses to cultural diversity, including isolationism, assimilationism, weak multiculturalism

(involving a state posture of 'benign neglect' or 'pure' toleration), strong multiculturalism (involving any state recognition or support of cultural identity), and apartheid. Showing how some of these responses have figured in Australia, Kukathas went on to defend the superiority of 'weak multiculturalism' as being the most consistent with classical liberalism. In contrast, Dr George Crowder (Flinders University) broached liberalism's basic posture toward cultural diversity by critically examining Isaiah Berlin's idea of value pluralism, according to which there are many genuinely valuable ways of life. While several theorists have invoked this idea of value pluralism to defend cultural pluralism in a strong sense, Crowder showed that Berlinian pluralism remains subject to liberal principles and scarcely supports 'unrestricted multiculturalism.' Australian multiculturalism, he concluded, basically conforms to these political implications of value pluralism.

Professor Barry Hindess (ANU) distinguished two influential approaches to the problems that cultural diversity poses for modern states. Where the 'multiculturalist' approach is concerned with a limited understanding of culture and range of cultural difference in human affairs and with establishing peaceful co-existence, the 'politics of difference' approach understands group disadvantage and the kinds of groups which suffer it much more broadly. Both approaches, Hindess argued, nevertheless view the state too benignly as simply the context in which the problem of diversity is addressed, rather than as part of the problem itself. Associate Professor John Kane (Griffith University) suggested that multiculturalism is caught in the uneasy relationship between liberalism and nationalism. The original marriage between the two ideologies via the nation-state broke down in the wake of bellicose nation-states, interstate conflict, and vicious nationalism within multi-national states. 'Ideological multiculturalism' is liberalism's quest to supersede cultural nationalism, but this quest, Kane believes, is likely to fail given that multiculturalism instantiates cultural nationalism in a different form.

### **Citizenship and diversity**

The two panels in this section focused on different aspects of citizenship or membership in a political community. Professor Philip Pettit (Princeton University) argued that citizenries should be thought of as distinctive entities in their own right rather than as just assemblages of citizens. Distinguishing three different pictures of the citizenry – 'solidarist,' 'singularist,' and 'civicist' – Pettit endorsed the 'civicist' idea that the normative content of citizenship cannot be specified in general and is up to democratic and contestatory resolution. The civic rights and duties, virtues and benefits that go with citizenship will thus vary according to the particular civic structure and character of a given polity. But so also should minorities have a vital role to play and voice in this civicist dialogue. As if to anticipate this argument, Professor Laksiri Jayasuriya (UWA) held that Australian multiculturalism is in crisis precisely because it has failed to keep pace with the 'new pluralism' of Australian society. Multiculturalism, he suggested, needs to be made central to Australian identity, and the meaning of Australian citizenship should be redefined in pluralistic terms that allow for a genuine politics of difference. Interestingly, this position is precisely what Galligan and Roberts' paper attacked as *already* the prevailing multicultural approach in Australia.

The next paper considered how the principle and policy of dual (or multiple) citizenship might inform multicultural policy. Associate Professor Kim Rubenstein (University of Melbourne) argued that globalisation is profoundly reshaping questions of legal status, membership, and identity in both the nation-state and internationally. Just as Australia

has recently acknowledged these developments by offering born-Australians the opportunity to hold dual citizenship, multiculturalism ought to allow, more extensively than is presently the case, the opportunity for its citizens to express their multiple attachments and identities. On the same panel, Associate Professor Arthur Glass (UNSW) addressed three areas of migration law that concern the liberal multicultural values of equality and due process: namely: the selection of entrants, their processing and their removal. Yet, Glass showed how our migration law is, in fact, compromised by an assortment of 'discriminatory' selection processes and visa classes. Similarly, the case of refugee law vividly illustrates the burdensome nature of general laws upon particular cultural groups, and challenges any presumed commitment to equality as the proper acknowledgement of difference.

### **Culture and rights**

The conflict between universal or liberal rights and particular cultural norms or the interests of cultural communities was the subject of the final two panels. Professor Moira Gatens (University of Sydney) addressed what is, perhaps, the main example where this conflict arises, namely, the situation of women who are both citizens and members of cultural minorities. Drawing on a recent case of arranged marriage in an Aboriginal community, Gatens argued for greater sensitivity towards the contexts in which such conflicts occur. To this end, the idea of the 'social imaginary,' as the always-present backdrop to meaningful social action, was suggested as a fruitful intermediate position from which the clashing interests over culture and rights might be negotiated. Pursuing the experience of Indigenous Australians, Larissa Behrendt (UTS) underscored how the ready use of emotive, nationalistic sentiment in public discourse and even putatively 'neutral' laws and policies perpetuate inequality in Australia. This process of 'othering' could be overcome to everyone's mutual advantage, Behrendt argued, by shifting Indigenous Australians from the periphery of society to instead become the 'litmus test' for developing and evaluating law and policy.

Associate Professor Susan Dodds (University of Wollongong) examined the problem in the context of democratic proceduralism and bioethics policy. Commitments to public deliberation and ethnic pluralism might suggest that policy-making in such an ethically contentious area of medical research should be based on both expert advice and public consultation. However, Dodds pointed to a variety of factors why such a 'purely procedural' approach to policy development in bioethics is problematic. Indeed, so much so that this raised the question whether contemporary liberal democracies *can* realise the ideals of democratic and legitimate policy-making in multicultural states. In the final paper, Associate Professor Duncan Ivison (University of Toronto) defended the importance of democratic deliberation by first asking whether multiculturalists are 'dogmatic moralists'; that is, apply moral judgements to issues or areas where such judgements are deemed inappropriate. Canvassing debates over multiculturalism in Australia and elsewhere, he found that multiculturalists are often guilty of moralism, but argued there are ways of defending multiculturalism that avoid such political resentment. Building cross-cultural acceptance of multicultural policies must be geared to showing how they serve both egalitarian justice *and* social solidarity. The only way of securing this acceptance, Ivison maintained, is through democratic deliberation, notwithstanding its own challenges.

Despite or because of the contentiousness of the subject, the workshop worked extremely well. For this, credit must be given, in addition to the paper-givers, to the fine work of the discussants, who included (in order of panel) Maria Markus, Geoffrey

Brahm Levey, Paul Patton, Martin Krygier, Adam Czarnota, and Garth Nettheim (all of UNSW), and Aleksandar Pavkovic (Macquarie University). The proceedings are presently being prepared for publication.



**Portrait of a Nation 2003:  
Reporting on the Inaugural Australian Survey of Social Attitudes (AuSSA)**

***Rachel K Gibson***

The goal of the workshop was to provide a forum for presentation of the findings from the first Australian Survey of Social Attitudes (AuSSA) conducted in August 2003. The AuSSA is planned as a biennial survey of Australian citizens and was developed by researchers from the ACSPRI Centre for Social Research (ACSR) at the Australian National University (ANU) in conjunction with a team of national and international experts. The AuSSA is designed to provide high quality data on the opinions of the Australian population toward their government and society. The survey was conducted as a mail-out, mail-back questionnaire by the Australian Social Science Data Archive (ASSDA) during August–December 2003. The workshop offered the first opportunity for dissemination of the findings from the AuSSA and brought together a range of scholars from a wide variety of social science disciplines and universities in Australia. The papers focused on empirical analysis of the survey data and covered a variety of social, economic and political topics including taxes and government spending, working hours, civic trust, immigration, and the power of the media. As well as providing a vehicle to ‘showcase’ the important findings from the dataset, the event also offered contributors the opportunity to gain advice on how to best structure their papers for a forthcoming edited volume with UNSW press *‘Australian Social Attitudes: The First Report’*.

The timeliness of the workshop was evident from the range and depth of the questions explored during the course of the two day event. Fundamental themes surrounding Australia’s national identity and values surfaced consistently across the panels, and led to reflection on the future direction for society. While evidence of increasingly liberal attitudes emerged in areas such as social spending and immigration, views on genetic testing and media power revealed a more sceptical nation. From a historical perspective, it seems that despite all the talk of economic rationalism and neo-liberal reforms, people have not given up on the importance of government as an agent of social and economic control. Nor, it would seem have they abandoned the idea of the importance of community or lost their faith in key institutions like the Courts, Parliament and Police. Indeed overall, there does seem to be strong evidence that Australians are quite trusting as a nation and display a marked willingness to get involved in voluntary associations.

The workshop was run in conjunction with the ACSPRI Centre for Social Research and the Academy of the Social Sciences, and was opened by Professor Frank Jackson, Director of the Research School of Social Science (RSSS) at the Australian National University and

Fellow of the Academy of the Social Sciences. Altogether it involved twenty participants from a variety of academic disciplines including sociology, political economy, demography, economics, political science and criminology. The background and experience of participants also varied from early career researchers through to distinguished scholars. Thirteen papers were presented, organised into four sessions as follows:

**Session 1: The Australian way: attitudes to economic reform**

This first session dealt with attitudes toward economic policies and the world of welfare and work. The first paper 'Have Australians embraced economic reform?' by Michael Pusey and Nick Turnbull (University of New South Wales) confronted the issue of how the shift toward economic rationalism by successive federal governments had influenced Australians attitudes toward the market, income distribution and ideas of community. Overall, it was concluded that there was clear majority support for the government as provider of key social services and disquiet existed among the population about the gap between the richest and poorest in society. Big business, while seen as overly powerful, was not distrusted on a level disproportionate to state bodies. The examination of responses to economic reform was then followed by the paper 'Where to for the welfare state?: Attitudes to spending, welfare and social services' by Shaun Wilson (Australian National University) and Gabrielle Meagher (University of Sydney) which focused on attitudes toward tax and social spending. Using over-time data the authors showed that people had become more supportive of government spending, even if it meant higher personal taxation. Not surprisingly perhaps, this was found to be age-related. Overall, the evidence pointed toward the need to question the view of Australians as supportive of a low taxing and low spending welfare state. The final paper in this session, 'How do Australians feel about their work?' by Jocelyn Pixley (UNSW) and Bill Martin (Flinders University) dealt with the orientation of Australians toward work. With much being written currently in academic and media circles about the so-called 'work-life collision', this paper dealt with a decidedly timely issue. The authors showed that overall work satisfaction was reasonably high in Australia, although there were clearly some work sectors, particularly the unskilled that experienced a high level of job insecurity combined with strong fears over their future employability. A significant minority of the population were found to be working more than average hours per week, although this did not necessarily correlate with those who expressed a desire to work less. Overall, the evidence pointed to the workplace itself as a key determinant over workers' positive experiences, rather than forces outside such as family and personal circumstances.

**Session 2: The social fabric: attitudes to families and crime**

Building on the understanding of work/life collision the first two papers in this session provided an insight into current views on what constitutes a family and the extent to which the policies of the current government have proved responsive to popular understanding of this central social pillar. In 'What makes an Australian family?' by Ann Evans and Edith Gray (Centre for Social Research, ANU) the authors reported that for Australians the understanding of what constitutes a family has become quite pluralistic, with around two fifths of AuSSA respondents agreeing that a same-sex couple with children fits the definition. This was largely related to age, however, with younger people being much more likely to entertain a more inclusive definition of family. In 'Families, white picket fences and barbecues' by Deborah Mitchell (Centre for Social Research, ANU) the theme of generational differences and orientations to family was underscored. In particular, the 'baby boom' cohort and Generation X revealed distinctly more positive views toward working mothers and single parents than their older counterparts. Shifts in policy by the Howard government in its 2004 budget toward financial support for families and recognising same

sex couples were seen as, in part, a recognition by political elites of the rise to the fore of these more liberal views. Finally, in their analysis of crime and anti-social behaviour in 'Zero tolerance: are we getting harder on lawbreakers?' David Indermaur and Lynne Roberts (Crime Research Centre, University of Western Australia), who were added to the program at short notice, reported on a very preliminary strategy for analysing attitudes toward lawbreakers.

### **Session 3: New social identities**

The final two sessions saw the focus of the workshop widen to look at Australians' understanding of their broader social context and their behavioural participation within it. In 'Postmaterialism, values and political action', Mark Western and Bruce Tranter (University of Queensland) noted the presence of a significant cohort of postmaterialists in Australia at the turn of the 21<sup>st</sup> century. As well as endorsing more 'liberal' causes such as the environment and being willing to pay higher taxes to do so, they exhibited a marked propensity to engage in more energetic types of 'bottom up' political action. In demographic terms, while the expected relationship to higher education and age emerged, youth effects, it was argued, should be understood in the broader context of cultural change, ie, greater exposure to higher education and the declining significance of organised religion for young people were also important to consider. Picking up on the theme of engagement in political activities, the second paper in the session 'Voluntary associations and political participation' by Andrew Passey and Mark Lyons (University of Technology, Sydney) reported a strong link between those who join in more community-related group activities and political action. Overall just over half of Australians reported some form of voluntary association membership and while the majority of members of voluntary groups were largely passive – paying dues and giving donations – there were one quarter who were more active, either holding office or attending meetings and raising support. The fact that voluntary association membership remained significant in predicting political participation after socioeconomic status had been accounted for was seen as important to underscoring its independent and positive effects on increasing engagement in democracy.

The third paper of the third session, 'Attitudes to immigration and national identity' by Murray Goot and Ian Watson (Macquarie University) moved the focus to Australians' perceptions of 'other', particularly racial minorities, and how positively they were regarded. Overall the paper concluded that there were some positive changes to note over time in attitudes toward immigrants, particularly in terms of popular perceptions of their value to the society and economy and expectations of any anti-social behaviour. National pride was also noted to have increased, although a 'nativist' streak in Australians was noted, with more negative and stereotyping views being espoused by certain groups, particularly those of lower education. The session ended with a highly provocative paper, 'Knowing your genetic information: freedom, burden or power?' by Kristine Barlow-Stewart (Centre for Genetics Education, RNSH). The author pointed to the low level of effective knowledge that Australians have about the laws governing the extent to which their genetic information can be stored and used by employers and insurers. While attitudes toward the use of genetic tests were generally cautious, overall most Australians were not set against expanding its use in the future. In particular, its use for immigration purposes aroused substantial levels of support compared with its deployment in the workplace.

### **Session 4: Australian institutions: media, globalisation and trust**

The final session offered a glimpse into the impact of the international environment and outside forces in the shape of the mass media on popular attitudes. In 'The mass media in Australia' by David Denmark (University of Western Australia) the heavy reliance of

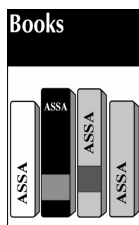


Australians on the TV in particular was noted, alongside a deep distrust and suspicion of its negative influence on social relations. Fears about the impact of television violence on society were evident, and the media's power overall was seen as being too great though media power was not seen as able to keep governments honest. Such contradictions pointed to an uneasy and complex relationship that while problematic, defied any easy solution. A similar ambivalence, it would appear, also characterises Australians' relationship to globalisation as Ian Marsh (ANU) pointed out in 'Australians and globalisation: an unconsummated affair', also lies at the heart of Australians' relationship to globalisation. This paper showed that despite fears about its impact on national cultural integrity and job security, as well as the power of international companies, the widening of product choice and exposure to other cultures brought about by globalisation were generally favourably regarded. Drawing all these strands together, the paper 'Is there a crisis of trust in Australia' by Clive Bean (Queensland University of Technology) provided some key insights into the state of trust among Australians toward one another and their social and political institutions today. In general, levels were reported to be holding relatively steady compared with a decade ago. Certainly among institutions, the defence forces and police were found to be riding high in terms of popular trust. The courts, unions and commercial entities such as banks and financial institutions, however, are revealed as the most vulnerable to accusations of a crisis of trust, with significant majorities voicing not very much or no confidence in them at all.

In conclusion, the workshop fulfilled a number of vital functions for social science in Australia. First, by bringing together an inter-disciplinary field of experts to utilise a new and exciting dataset it helped strengthen and build networks within quantitative social science in Australia. In addition, it allowed for a significant exchange of perspectives, promoting the rigorous evaluation, updating and even confronting of some common assumptions. In doing so, it provided an important overview and updating of our knowledge about the significant social trends affecting individuals and families in Australia today. Finally, while the papers provided important new evidence to feed into key debates among academics, the importance of the AuSSA and the workshop output as a resource that will inform policy and make it more 'evidence-based' was also noted. In addition to the publication of the book, plans for a series of short media 'friendly' pieces prepared by the authors, to coincide with publication, were also discussed.



## Books



***The Mobile Connection: The Cell Phone's Impact on Society.*** By Rich Ling. Morgan Kaufmann: 2004.

Ling's first book builds on years of research, mostly conducted through his institutional base at Telenor, Norway's largest telecommunications company, and the University of Udine in Italy.

Here, Ling has put together an interesting collection covering some of the more popular areas of the sociology of the mobile phone, including the use of short-message-system (SMS) text-based communication, the use of mobile phones by teenagers and young adults, and the etiquette (or lack thereof) of using mobile phones in public areas.



Internationally, particularly in Scandinavia, Western Europe and Japan, but also in South Korea, Hong Kong and the Philippines, there has been a substantial interest in the sociology of mobile information communications technologies. In Australia, there is a relative paucity of serious work in this regard; despite enthusiastic uptake and use of mobile phones, and public concerns regarding the impacts on public health, safety (especially when used while driving) and economic stresses placed upon younger users.

*The Mobile Connection* ought, therefore, to be considered in the context of an awakening scholarly, industry and public interest in further research into the social impact of the mobile phone in Australia. In this regard, Ling has contributed a text that may be regarded as a touchstone for further work by scholars, as well as a resource for students from undergraduate levels. It is also a lesson in the slow burn. Ling's reference to Roger Silverstone and Leslie Haddon's work (p 26ff) on the domestication of technology in the early and mid-nineties, shows that at least two sociologists (both working at the University of Sussex at the time) had developed strategies for thinking through the accession of new technologies to private space. They rightly saw mobile telephony on a continuum with its forebears in wireless transmissions, and in other technologies making their way into daily use over the last hundred years. The demystification of the mobile through an acknowledgment of existing sociologies of mobility and of technology transfer is important for new work in the field.

Introduced with an account of the development of the technology and the growth of the market, *The Mobile Connection* is divided into seven thematic chapters.

The first of these (Chapter Two) shapes later discussions by exploring ideas of technical and social determinism, and putting forward Silverstone's 'domestication' model as a means of exploring information communication technology as a relationship between the technical and the social in what Ling refers to as the 'adoption cycle'. Stages in this cycle include imagination, appropriation, objectification, incorporation and conversion. Ling summarises the process:

When we progress through this cycle, we start out with an understanding that a particular artefact exists first as an imagined consumption, as in a type of extended window shopping. Based on this, we perhaps decide to incorporate the item into our daily life. Its purchase removes it from the commercial world.

Subsequent to purchase, we must work through how the item will be arrayed and also explore its actual use. Here we go through the real consumption and thereby examine the qualities of the item and map them onto our imaged self. The final turn in the cycle is that the object becomes an element in others' estimation of us. (p 30)

Domestication is not a theory as much as an approach to research. It charts pathways to follow, and nominates crucial moments in the relationships between the user and the object that may warrant particular attention. One of these, the process referred to above as 'the real consumption', is of particular significance. At this point the critical question switches from one that greatly concerns industry marketers ('why is it bought?') to the one concerning Ling's sociological analysis: how is it used? This question, we should add, is implicit in the challenge thrown forward in the ASSA/AMTA (2004)\* discussion paper: 'Each of us has anecdotes and opinions about the mobile phone, but few of us can boast a truly informed view'. (p 3)

Ling's primary data includes observational studies, qualitative interviews and quantitative analysis. It highlights the lack, as noted in the ASSA/AMTA paper, of comparable studies in Australia.

Thematic chapters provide a useful introduction to recent and ancient (!) paths to scholarship on mobile ICT. Chapter Four, on the coordination of everyday life, for example, sets the scene by reaching back to the thirteenth century development of mechanical timekeeping to monitor and maintain the cycles of monasteries and, later, civic functions, sporting events and lengths of tortures and other punishments. Following synopses of the development of the standardisation of time and the establishment of rules of etiquette relating to punctuality, Ling then suggests that

It is possible to say that the mobile telephone has completed the automobile revolution. Where the automobile allows flexible transportation, up until the rise of mobile telephony there has been no similar improvement in the real-time ability to coordinate movements. When you were en route, you were incommunicado. The mobile phone completes the circle. (p 69)

The concluding chapter is the most intriguing. Sub-titled 'The Significance of Osborne's Prognosis', it refers to the 1954 prediction by outgoing AT&T chief engineer Harold S Osborne that children will one day be born with a telephone number for life, able to collect the numbers of their friends and call them at any time. What are the consequences of the ubiquity of mobile ICT, the constant contact mobile users alternatively enjoy and recoil against? With reference to the development of theories of social capital, networking, smart mobs and swarms, or trends towards social atomism and virtual walled communities, Ling asks 'Will the mobile telephone result in a flowering of the social sphere, or the retreat to a balkanised social clique?' His ultimate answer is one based on hope – that mobile ICT will enable common experiences and insights, develop relationships in between face to face meetings, and not 'hinder our participation in the here and now'. (p 195). Let's hope he is right.

\* Available from the Academy Secretariat.

**Stephanie Hemelryk Donald and Damien Spry**

***Us and Them: Anti-Elitism in Australia.*** Edited by Marian Sawer and Barry Hindess. Bentley, WA: API Network. 2004.

This is a very valuable collection in the light of the Howard and Bush election victories of late 2004 and of the ruminations of their opponents about the meaning of those victories. The central concern of the book is the rise of a conservative discourse in politics which mounts a populist attack on elites, on the 'new class' and on 'special interests', all of which are said to be ranged against the interests of ordinary Australians.

Barry Hindess and Marian Sawer argue that anti-elitist populism is not new in Australia but that in its current form it represents 'a profound change in the character of Australian public life'. They nicely sum up the images which conservative populism promotes of the elites as those who 'lead privileged existence at the expense of ordinary taxpayers, while at the same time despising the latter's tastes and values, and lecturing them on issues such as environmentalism, feminism and multiculturalism.' Carol Johnson cites a Liberal strategist for the 'No' campaign on the republic ballot: 'This ballot should be presented as real Australians' greatest chance ever to vote against all the politicians, journalists, radical university students, welfare rorters, academics, the arts community and the rich, that, deep down, they've always hated.'

Conservative anti-elite populism is a strategic discourse through which the culture war is waged by the Right. One of its key functions is to replace the public discourse of the class war through reversing the polarity of blue collar politics, from Left to Right. It also seeks to de-legitimise liberal-left opinion based on the ideas of feminism and cultural diversity. It has had significant success in doing this through mobilising conservative moral values against which the liberal-left has little effective answer. In doing this, conservative populism relies on the kind of crude economic determinism once promoted by the Marxist left which sees ideas mirroring class position. Right wing rage against the 'elites' often reminds me of the leftist damnation of 'middle class values'. In the ALP, such ideas are today echoed in attacks on 'Chardonnay socialists'.

Another powerful device of the anti-elite culture warriors is the depiction of the liberal-left as an extraordinarily powerful, all conquering force and its critics as embattled and intimidated. This reverses the truth, even granting that the liberal-left was a powerful hegemonic force on cultural issues from roughly the late 1970s to the early 1990s. This struggle to be David not Goliath was beautifully illustrated in the Tampa crisis by Howard's statement that he was not going to be 'intimidated' by desperate asylum seekers.

For a long while it has been tempting to see conservative populism as so grotesque and topsy turvy that it is better to ignore or dismiss it. *Us and Them* helps reverse this attitude and contributors such as Marian Sawer, Carol Johnson, Tim Dymond and Damien Cahill provide valuable empirical work charting the rise of anti-elite discourses and their links with US conservatism.



In all of this, the agenda setting role of the Murdoch press, notably *The Australian*, has proved important. Sean Scalmer and Murray Goot analyse the uses of elite discourse in this newspaper and in the *Sydney Daily Telegraph* and the *Brisbane Courier Mail*. Leaving aside the news reporting of anti-elite comments by participants in the Hanson debate and republic poll, conservative elite discourse was disproportionately articulated by columnists such as Michael Duffy, Frank Devine, Ron Brunton, Piers Akerman and Andrew Bolt. As they say 'the discourse was driven less by the reporting of news and more by the generation of comment on the news.'

Conservative populism is very effective because it identifies crucial weaknesses in the liberal-left world view. Carol Johnson and Michael Pusey both highlight the crucial role of national identity in constructing 'us and them'. Opposing this, calls for diversity and tolerance sound weak and unconvincing, in my view. Against the right wing projection of a certain national identity there is no convincing alternative projection of a progressive national identity and core values. Indeed some would regard such as project as inherently flawed.

A number of contributors, such as Damien Cahill, point out that the new anti-elitism 'has been successful because it speaks to fears and insecurities brought about by the major social and economic changes that have occurred in Australian society during the latter decades of the twentieth century.' This is important to note as long as it does not substitute for other, less reassuring, reasons. The term 'political correctness' gained popular currency because it resonated with the experience of many people who genuinely perceived multicultural and feminist ideas as a new orthodoxy imposed by governments. Some still regard this as unpalatable.

One of the ongoing paradoxes is indirectly highlighted by Michael Pusey's work. He paints a picture of a group he calls the 'battling Hansonites' who are victims of neo-liberal economic reforms. They resent the ruthless commercialism of banks and similar institutions. They often work casual and contract work, sometimes for former employers who have outsourced them. They resent the huge payouts to departing CEOs who have downsized firms. They complain about stress, irregular hours and they are shackled to scary mortgages. Fertile ground one would imagine for a old-style working class revolt against the economic elite, yet these are the same people who are mobilised against the 'special interest groups' and the refugees. These are Howard's battlers. Never was the disconnect between economic position and consciousness so stark. Never was the liberal-left's inability to develop a moral language and political program to address such people so glaring.

Trade unions and the social movements were once populist movements themselves but they have largely lost this character and now aim to sway governments rather than popular support. They were once able to fashion a new common sense in the way that conservative populism now does. *Us and Them* helps us see that populist ideas – whether of Right or Left – need to be expressed strongly, simply and in moral terms. Just how those opposing conservative populism might achieve this honestly and authentically remains a challenge.

**David McKnight**

## Opinion

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### Humanitarian Intervention and the 'War on Terror'

*Alex J Bellamy*

In 2004, international society commemorated the tenth anniversary of the Rwandan genocide. The world's failure to prevent or halt the hundred day long genocide was described as a 'sin of omission' by UN Secretary-General, Kofi Annan.<sup>1</sup> Annan singled out the Security Council for specific criticism, insisting that it had failed in its duty to maintain international peace and security. Referring to Rwanda in 2001, Tony Blair had promised that 'if Rwanda happens again we would not walk away as the outside world has done many times before' and argued that international society had a 'moral duty' to provide international military and humanitarian action when it is needed in Africa.<sup>2</sup> For his part, George W Bush chose to neither condemn the failures of the past nor make promises for the future. In stark contrast to his 'pro-freedom' interventionist zeal in the Middle East,<sup>3</sup> Bush marked the tenth anniversary of the Rwandan genocide by 'supporting' the Rwandan people and the efforts of the International Criminal Tribunal for Rwanda.<sup>4</sup> Elsewhere, however, the White House has labelled as 'rogues' those states that 'brutalise their own people and squander their natural resources for the personal gain of their rulers'.<sup>5</sup> All this, coupled with the experiences of intervention in East Timor, Kosovo, Afghanistan and Iraq may suggest that a new norm of legitimate humanitarian intervention in times of 'supreme humanitarian emergency'<sup>6</sup> has finally emerged in international society. Certainly, when the UN Under Secretary-General for Peacekeeping, Jean-Marie Guehenno marked the Rwandan anniversary by asking whether the world would let such a thing happen again, the answer appeared to be a resounding 'no'.<sup>7</sup>

At the same time as international society reflected on the lessons of Rwanda, another catastrophe was unfolding in the Darfur region of Sudan.<sup>8</sup> There, the government and its notorious *Janjaweed* militia had responded to a 2003 uprising by the Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM) by terrorising the local civilian population. The Sudanese government and its militia emptied the countryside of civilians, forcing them into either the cities or into Chad. The result of this ethnic cleansing is a displaced population of over one million people, and an uncounted number of civilians. Certainly tens of thousands, have been killed.<sup>9</sup> There is also evidence of widespread and systematic rape. In late 2003, Kofi Annan warned that the situation in Sudan could descend into 'another Rwanda'.<sup>10</sup> Early in 2004 Roger Winter told a US Congressional Committee that the death toll could increase to 2,400 people per day if there was no international action to remedy the problem.<sup>11</sup>

Given the 'Rwanda effect', the US administration's determination to rid the world of 'rogue regimes' that brutalise their populations, and the lack of any serious strategic obstacles (Sudan is not a major military power by any stretch of the imagination), one might have expected to have seen international society respond decisively to the ethnic cleansing and mass murder in Sudan. Instead, between the start of the Darfur rebellion in 2003 and the Naivasha peace agreement (relating to the long-standing civil war between the government and the Sudanese People's Liberation Movement/Army – SPLM/A in the south) in May 2004, the Security Council spent only eleven minutes

deliberating on the issue and not until later the same month did it condemn the systematic and widespread atrocities.<sup>12</sup> Once the issue was taken up seriously by the Security Council in June-July 2004, Western states were reluctant to cast doubt upon Sudan's sovereign rights or challenge Council members who have been traditionally reluctant to endorse humanitarian interventionism.

This brief essay evaluates the impact of the 'war on terror' on the norm of humanitarian intervention. For many developing states, the use of humanitarian arguments to justify the war in Iraq proved what they had long feared: that legitimising a norm of humanitarian intervention could open the door for more Great Power intervention in the domestic affairs of the weak.<sup>13</sup> Sustaining a humanitarian argument in the Security Council, in the face of mounting suspicion that such arguments may be 'Trojan horses' for neo-imperialism, therefore requires a large investment of political capital, as the Kosovo case demonstrated. That is not to say that Western states will choose not to invest that capital, but the Darfur case suggests that in crises lacking strategic importance, the US and UK in particular are unlikely to be willing to incur further international opprobrium in order to 'save strangers' in peril. The sun may have set on humanitarian intervention, as Thomas Weiss recently argued, and it is the people of Darfur who are paying the price.<sup>14</sup>

#### **The humanitarian Intervention norm**

The idea that there is a limited right of intervention in supreme humanitarian emergencies is today well-established in international society and widely recognised by scholars.<sup>15</sup> As Kofi Annan asked retrospectively, 'if in those dark days and hours leading up to the genocide [in Rwanda in 1994], a coalition of states had been prepared to act in defence of the Tutsi population, but did not receive prompt [Security] Council authorisation, should such a coalition have stood aside and allowed the horror to unfold?'<sup>16</sup> Counter-factual arguments are always problematic, but it is highly unlikely that any state would have objected had another used force unilaterally or as a member of a coalition of the willing to halt the Rwandan genocide. What we do know is that during the Security Council's deliberations about the genocide, no state argued that the non-intervention rule (Article 2 (7) of the Charter) prohibited armed action to halt the bloodshed.<sup>17</sup> Moreover, as Simon Chesterman has pointed out, there is little evidence to suggest that states are inhibited from saving strangers by the non-intervention rule.<sup>18</sup> The one exception to this may be the belated Australian intervention in East Timor, in 1999. In that case, the Australian government delayed intervening to halt the killing of East Timorese civilians by Indonesian backed militia until it had secured the consent of the Indonesian government, but there were good prudential reasons for that position.<sup>19</sup>

In practice, the idea that there is a 'humanitarian exception' to the non-intervention rule had its origins in the allied interventions in northern and southern Iraq in the immediate aftermath of the first Gulf War. In that case, the US and UK adopted a liberal interpretation of Security Council Resolution 688 to justify the creation of safe havens in northern Iraq. Although both Russia and China had grave misgivings about the legality and morality of the intervention, foreclosing the possibility of a Security Council resolution expressly mandating the use of force to create safe havens, there was very little outright opposition to the intervention in international society. As Wheeler put it in relation to the southern no-fly zone imposed on Iraq, 'international acceptance of the zone reflected the fact that no one wanted to be seen criticising an action that was directed against a government that was guilty of appalling human rights abuses'.<sup>20</sup>

The interventions in northern and southern Iraq were not 'norm creating' in themselves, first of all because Resolution 688 had been so ambiguous (the argument that Resolution 688 authorised the use of force is analogous in strength to the argument that Resolution 1441 authorised the use of force in 2003) and secondly because the Gulf War coalition had special wartime responsibilities to the indirect Iraqi victims of the war they had waged.<sup>21</sup> However, subsequent practices in Bosnia, Somalia and Haiti and the acts of omission in Rwanda all pointed towards an emerging humanitarian exception to the non-intervention rule.

The Somalia (1993-94) and Haiti (1994) cases are particularly important because in both those cases the Security Council identified human suffering and governance issues as threats to international peace and security and therefore legitimate as objects of intervention. In relation to Somalia, Resolution 794 authorised the use of 'all necessary means to establish as soon as possible a secure environment for humanitarian relief operations'.<sup>22</sup> This resolution provided the legal basis for the US-led *Operation Restore Hope*, which ended in bloody failure on the streets of Mogadishu.<sup>23</sup> The resolution was nevertheless crucial because the Security Council determined that the 'human tragedy' alone in Somalia constituted a threat to international peace and security that warranted the use of force to ameliorate it. In 1994, the Security Council found that the overthrowing of the elected President of Haiti also constituted a threat to the peace.<sup>24</sup> By the mid-1990s, therefore, there was widespread recognition of the legitimacy of humanitarian intervention sanctioned by the Security Council.<sup>25</sup>

In the past five years there is evidence that among Western states at least there is growing acceptance that intervention even without the explicit authorisation of the Security Council can be legitimate in supreme humanitarian emergencies. In wider international society this idea is tolerated though not wholly embraced. NATO's intervention in Kosovo in 1999 provides a case in point. Reflecting on the legality and legitimacy of the intervention, a commission of experts found the intervention to be 'illegal but legitimate', a view that accurately reflects sentiment in international society.<sup>26</sup> Most NATO states chose not to defend their actions in legal terms, arguing instead that the persecution of Kosovar Albanians created a *moral* imperative to act. However, when Russia tabled a draft resolution in the Security Council condemning the intervention and demanding its immediate ceasefire, it was rejected by twelve votes to three (Russia, China, Namibia). Although five of the voters were NATO members, seven were not. The most interesting fact is that the seven remaining states chose not to abstain but to actively cast their vote in support of NATO. Particularly surprising amongst these voters was Malaysia (a long-standing defender of state sovereignty and advocate of the so-called 'ASEAN way'), Gambia, Gabon and Argentina. Although none of these states gave NATO a ringing endorsement in the Council, and Nigel White was correct to point out that the failure of the Russian draft did not constitute tacit retrospective authorisation, the vote did demonstrate grudging acceptance that in certain extreme cases it is legitimate to take measures outside of the Council.<sup>27</sup> Moreover, both China and Russia legitimised the end-result of the NATO campaign by approving Resolution 1244 which created the UN Mission in Kosovo (UNMIK).

Since Kosovo, there has been growing evidence of a shift towards acknowledgment of a limited moral but not legal right of unauthorised humanitarian intervention in cases of massive human suffering. In 2001, the high profile International Commission on Intervention and State Sovereignty (ICISS) tried to articulate the nature of the



relationship between sovereignty and human rights. The ICISS recommended replacing debate over 'the right to intervene' with 'the responsibility to protect'. 'The responsibility to protect' looks at the issue from the point of view of those needing help; acknowledges that the host state has primary responsibility for the welfare of its citizens and that intervention can only be contemplated if the state is either unwilling or unable to fulfil its responsibilities to its citizens; finally, it means that intervention ('the responsibility to react') should be situated alongside prevention and post-conflict rebuilding.<sup>28</sup> Whilst *The Responsibility to Protect* suggests that the Security Council should remain the primary instrument for authorising humanitarian intervention - arguing that the Council reform its practices to make it more responsive to humanitarian emergencies - it nevertheless also suggested alternative routes (such as the General Assembly) that potential interveners might take when the Council is blocked by vetoes.

The ICISS report alludes to the emerging idea of 'sovereignty as responsibility' first outlined by Francis Deng in 1996.<sup>29</sup> Since 1999, the idea that sovereign rights derive from the fulfilment of certain humanitarian responsibilities has been widely expressed in international society. For example, contemporary US foreign policy identifies 'rogue states' as those that fail to live up to their responsibilities in three respects: they do not abide by basic principles of humane governance, they disregard international law, they support terrorist activities that by their very nature constitute crimes against humanity, and they illicitly develop Weapons of Mass Destruction (WMD).<sup>30</sup> In 2001, Kofi Annan used the Nobel Lecture to argue that 'the sovereignty of states must no longer be used as a shield for gross violations of human rights.'<sup>31</sup> Importantly, given the continent's traditional defence of sovereignty, Article 4 (h) of the African Union's Constitutive Act signed on 11 July 2000 awarded the new organisation, 'the right...to intervene in a Member State pursuant to a decision by the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.<sup>32</sup> In other words, the African Union (AU) reserves for itself a right of humanitarian intervention unauthorised by the Security Council.

Not only has the 'sovereignty as responsibility' idea been adopted in the rhetoric of many states and organisations, it has also had a significant impact on state practice. Since 1999, a host of interventions with significant humanitarian components have been launched without the authorisation of the Security Council. With the notable exception of the US invasion of Iraq in 2003, these interventions have been widely accepted as legitimate by international society. They include: in 2001, South African intervention in Burundi; in 2002 the multinational intervention in the Central African Republic, the French intervention in Côte d'Ivoire and the US-led intervention in Afghanistan; and in 2003 the AU intervention in Burundi, the ECOWAS intervention in Liberia, the EU operation in Macedonia, and the Australian-led intervention in the Solomon Islands. None of these operations were authorised by the Security Council, but all were widely considered to be legitimate by international society, in most cases because they were conducted with the consent of the host nation. What was important is that in all of these cases there was either a regional organisation, pivotal state or Western power prepared to invest political capital (in terms of presenting and defending a strong case to the court of world opinion) and material resources in order to secure a degree of legitimacy for the intervention.

As I mentioned earlier, the important exception to this trend was the US-led invasion of Iraq. In this case, the political leaders in all five of the major troop contributing states (US, UK, Poland, Spain and Australia) gave considerable weight to the *humanitarian*

justification for war, particularly as justifications based on WMD or self-defence floundered. Whatever one thinks of the argument, it must be conceded that of all the different cases for war with Iraq, the humanitarian case has proven more persuasive to international society and world society than any other.<sup>33</sup> However, most actors in international and world societies rejected the humanitarian argument in this case. Kenneth Roth, Director of Human Rights Watch, argued that the Iraq war could not be considered a humanitarian intervention because the humanitarian impulse was not the primary motivation. This resulted in the allies choosing strategies that caused harm to the civilian population (such as the use of cluster munitions) and their apparent failure to plan for post-war reconstruction.<sup>34</sup> Similarly, in a comprehensive overview of the legal debate about humanitarian intervention, David Vesel pointed to the absence of reference to either a 'current, growing, or imminent' humanitarian emergency in Iraq within Security Council Resolutions as evidence that 'the Security Council, as a whole, did not consider the situation in Iraq to be a threat to international peace and security for humanitarian reasons'.<sup>35</sup> Whereas in the Kosovo case, international society by and large accepted NATO's plea to be acting for primarily humanitarian reasons, in the Iraq case significant actors in international and world society believed that humanitarian justifications were used to mask the exercise of hegemonic power. According to Gareth Evans, one of the leading progenitors of the *Responsibility to Protect* initiative, the 'poorly and inconsistently' argued humanitarian justification for the war in Iraq has 'almost choked at birth what many were hoping was an emerging new norm justifying intervention on the basis of the principle of "responsibility to protect"'.<sup>36</sup>

International society's response to Darfur is therefore an important test case to ascertain whether the Iraq experience has had a profound impact on the politics of humanitarian intervention, as it is the first relatively clear case of 'supreme humanitarian emergency' since the Iraq invasion. As we will see below, Iraq appears to have increased the level of global scepticism towards the West's humanitarian interventionism. Concerns that the West would use a new intervention norm to impose its will on weak states were prevalent throughout the 1990s but were tempered somewhat, particularly as non-Western states themselves participated in coalitions of the willing to remedy humanitarian crises in other countries. However, the perceived abuse of humanitarian justifications in the Iraq case has heightened global scepticism about the humanitarian intervention norm. This has had two principal effects, both of which have come into play in international society's response to Darfur. Firstly, heightened scepticism has made it harder for potential interveners to justify intervention on the grounds of human suffering. Secondly, therefore, potential interveners will need to invest a substantial degree of political capital before intervening. In other words, they must be prepared to offer robust humanitarian justifications and to back these up with evidence of a prior commitment to alleviating human suffering in the potential target region, together with a long-term commitment to post-war reconstruction. As a result, intervention will only be likely if there is either a regional organisation (such as NATO, AU, ECOWAS, SADC) or pivotal state (such as Australia in the South Pacific) with the capacity and will to act in the neighbourhood, or if Western states accept that a particular crisis is so severe that intervention is necessary and are prepared to invest sufficient amounts of political capital. The likelihood of Western-led (especially US or UK led) humanitarian intervention is further constrained by the fact that American and British forces are already overextended in Iraq and Afghanistan. To be picked up by either London or Washington, therefore, a humanitarian emergency would either have to involve significant strategic interests

understood in terms of the war on terror (Afghanistan) or involve a humanitarian tragedy of Rwanda-like proportions.

From this brief discussion, I argue that contemporary international society recognises two types of right in relation to humanitarian intervention. First, it recognises that the Security Council has a broad right to identify almost any human tragedy as a threat to the peace and to authorise enforcement action. Second, they recognise a much narrower moral but not legal right of unauthorised intervention in cases of large-scale human suffering. The latitude of this latter right has narrowed considerably as a result of Iraq, but so has the US and UK's interest in armed humanitarianism. Humanitarian intervention after Iraq is therefore caught between the Scylla and Charybdis of perceived abuse and selectivity. Perceptions of abuse in the Iraq case have increased the level of political capital that would need to be invested by a potential intervener to secure legitimisation. Simultaneously, military overstretch and the strategic prioritisation of counter-terrorism is likely to make key interventionist states such as the US and UK less willing to invest the political capital that they invested in Kosovo (1999), let alone the higher levels that post-Iraq international society demands. The problem is not just that there will be too little humanitarian intervention, as Weiss argued,<sup>37</sup> but that the increased use of humanitarian language to justify wars widely perceived as illegitimate by international society will both mask this trend and further heighten scepticism and hostility to the intervention norm.

### **The Crisis in Darfur**

When the Darfur crisis finally made it onto the policy agenda in New York, in June-July 2004, it was largely because of energetic lobbying by the UN secretariat, some European states, and a handful of determined world society actors such as journalists and human rights organisations. The UN's role in placing Darfur on the agenda once again highlighted the important distinction between the global organisation's functional bodies and its political organs. For much of 2003 and early 2004, the UN's funds, programs and agencies were actively involved in both attempting to remedy the immediate humanitarian crisis and in placing Darfur on the Security Council's agenda, which during this period was dominated by Iraq and (though to a much lesser extent) Afghanistan. In early 2004, senior UN figures began using language reminiscent of other supreme humanitarian emergencies in reference to Sudan. The UN's Representative in Sudan accused Arab militia groups backed by the government of 'ethnic cleansing' and warned that the humanitarian catastrophe in Darfur would be comparable to the Rwandan genocide.<sup>38</sup> Around three weeks later, Jan Egeland (UN Under-Secretary General for Humanitarian Affairs and Relief) reiterated the 'ethnic cleansing' claim and called for the Security Council to address the issue.<sup>39</sup> Using a speech to the UN's Human Rights Commission on the tenth anniversary of the Rwandan genocide, Kofi Annan lent considerable weight to his colleagues' views. He noted that events in Darfur:

...leave me with a deep sense of foreboding. Whatever terms it uses to describe the situation, the international community cannot stand idly by...[T]he international community must be prepared to take swift and appropriate action.

By 'action' in such situations I mean a continuum of steps, which may include military action.<sup>40</sup>

When the Darfur crisis first made it onto the policy agenda, the possibility of humanitarian intervention was foreclosed at the outset. Unsurprisingly, the Sudanese government has on the one hand tried, albeit unconvincingly, to distance itself from the

*Janjaweed* whilst on the other hand rejecting international interference in its 'domestic affairs'. In October 2003, the Khartoum government almost banned international aid agencies and has continued to impede aid workers by installing a slow and bureaucratized visa system and failing to provide even a basic minimum level of security.<sup>41</sup> In April 2004, the government reluctantly agreed to negotiate with the rebels in Darfur and disband the *Janjaweed*. Negotiations were stalled by the failure to secure a ceasefire and there is no evidence that the Sudanese government has taken steps to disarm the *Janjaweed*. In July 2004, the government stated that it had decided to 'strongly resist all (UN Security Council) resolutions calling for despatching international forces to Darfur', including the use of force in necessary.<sup>42</sup>

Sudan's claim that the Darfur crisis is an internal matter and not subject to foreign intervention has received considerable support from the African Union (AU), despite that organisation's interventionist constitution. Chad, which borders Darfur and has received around 170,000 refugees, supported the Sudanese position on intervention, perhaps because Sudan was instrumental in bringing Chad's President Idriss Deby to power in 1990, in a coup launched from Darfur.<sup>43</sup> African states have by and large avoided criticising the Sudanese government and have consistently displayed a preference for a small African Union (AU) observation mission to be sent to the region, deployed with Khartoum's consent. At present, a force of around 3,000 peacekeepers drawn from Nigeria, Ghana, Mali, Senegal, South Africa, Tanzania, Rwanda, Ethiopia and Chad (the latter two, allies of the Sudanese government) is envisaged.<sup>44</sup> In mid August, Rwanda deployed 154 peacekeepers as an advance party for the AU mission, with President Kigame insisting that his forces would use force to protect civilians if necessary.<sup>45</sup> However, since these initial deployments it has become clear that the intervention force is more likely to freeze the status-quo (*Janjaweed* supremacy) in place and legitimise the Sudanese government than provide genuine humanitarian assistance. Moreover, potential troop contributors have expressed doubt about how long they can sustain a peacekeeping deployment in Darfur without significant financial and materiel assistance from the West.<sup>46</sup>

It has also become apparent, since April 2004, that the US, UK and other key Western states do not have the will to invest a sufficient degree of political capital to legitimise intervention in Sudan. There are at least three reasons for this. First, the US and UK in particular have other strategic priorities and are not interested in offering much other than rhetorical and token financial support for any intervention. This is because, second, neither state has any strategic interests understood in terms of the war on terror in Darfur. Indeed, given Sudan's cooperation with the US in tracking down Al-Qaeda suspects, cooperation that has seen Sudan removed from the US' list of states connected to the terrorist movement, US strategic interests appear to dictate the maintenance of friendly relations with Khartoum.<sup>47</sup> Finally, post-Iraq, the heightened scepticism towards the norm of humanitarian intervention on the part of the developing world, and the AU especially, has increased the potential political and material costs for Western states pursuing an interventionist line and none of the permanent members of the Security Council (or, it must be said, other powerful states such as Germany) are willing to incur those costs by putting their political head on the line for Darfur.<sup>48</sup> As a result, the debate about how international society should respond to Darfur has been framed more in terms of Sudan's sovereign rights than the world's 'responsibility to protect' its imperilled citizens. This stands in contrast to the debate in

world society, which has tended to focus on the world's responsibility to assist Darfurians.<sup>49</sup>

Security Council deliberations about Darfur have been deferential to Sudanese sovereignty. On 25 May, the Council issued a pre-agreed presidential statement that expressed 'grave concern' about the humanitarian situation in Darfur and the evidence of large-scale human rights abuse in the region. The Council 'called upon' states to provide humanitarian assistance and made a point of 'welcoming' the Sudanese government's decision to grant limited visas to aid workers.<sup>50</sup> In a further concession to the supporters of Sudanese sovereignty, the Council encouraged 'the parties to step up their efforts to reach a political settlement to their dispute *in the interest of the unity and sovereignty of Sudan*'.<sup>51</sup>

The underlying dynamics of the Council debate became more apparent when it met on 11 June to unanimously pass Resolution 1547, which expressed the Council's willingness to authorise the creation of a peacekeeping operation to assist the implementation of the Nairobi peace accord between the government and the SPLM/A. Although this resolution does not directly pertain to it, the discussion that accompanied it sheds important light on the Darfur intervention debate. First, the discussion and ensuing resolution provides evidence of the widespread scepticism about humanitarian interventionism discussed earlier. As in the earlier Council discussions and in the Human Rights Commission's deliberations there was strong support for Sudanese sovereignty, revealing deep scepticism about humanitarian interventionism. Pakistan reminded the Council that:

The Sudan is an important member of the African Union, the Organisation of the Islamic Conference and the United Nations. As a United Nations member, the Sudan has all the rights and privileges incumbent under the United Nations Charter, including to sovereignty, political independence, unity, and territorial integrity - the principles that form the basis of international relations.<sup>52</sup>

That this was not a minority view in the Council is shown by the fact that the drafters of Resolution 1547 felt it necessary to doff their caps to Sudanese sovereignty by inserting a passage 'reaffirming its commitment to the sovereignty, independence and unity of Sudan'.<sup>53</sup> It was clearly the view of Pakistan, amongst others (such as China and Russia), that the scale of human suffering in Darfur was not sufficient to provoke serious reflection on whether Sudan was fulfilling its sovereign responsibilities to its citizens.

Similar arguments have, of course, been made before. One need only look at the chorus of opposition to NATO involvement in Kosovo, the US' 1994 intervention in Haiti, and even - amongst some in Southeast Asia - to the Australian led intervention in East Timor to see that what Pakistan was arguing was not novel. Yet, as we saw in the first part of this paper, such views failed to hold back the emergence of a broad global consensus that in some circumstances humanitarian intervention is both necessary and legitimate. In these other cases, alternative views were strongly articulated by a diverse range of states, but especially by the US, UK, Australia, NATO and the EU. This debate therefore provides further evidence that anti-interventionism has become more popular since Iraq. But what is also striking about the Council debate over Sudan is that whilst the three Western states that spoke (UK, US, Germany) all pointed to the humanitarian catastrophe in Darfur and tacitly acknowledged the evidence of widespread and systematic war crimes and crimes against humanity, none of them cast doubt upon Sudan's sovereign rights or called for more robust intervention.

This pattern was repeated on 30 July 2004, when the Council met to pass Resolution 1556 (passed with 13 affirmative votes and two abstentions – China and Pakistan). In the Council's deliberations three different positions were put forward. The first view, proposed by the Philippines was that Sudan had failed in its duty to protect its citizens and that in such cases international action is warranted.<sup>54</sup>

At the other end of the spectrum, China, Pakistan and Sudan all rejected talk of intervention, whilst Brazil and Russia appeared generally reluctant to contemplate this question. China abstained in the vote, complaining that the Resolution contained 'mandatory measures' against the Sudanese government, whilst Pakistan argued that it 'did not believe that the threat or imposition of [economic] sanctions against...Sudan was advisable'.<sup>55</sup>

The resolution's sponsors and their supporters, in line with their earlier engagement with Darfur, adopted a line in between these two other positions. The US, UK, Germany, Chile and Spain all invoked the language of sovereignty as responsibility (rather than directly referring to it) without taking the next step and arguing that Sudan ought to lose its sovereign prerogatives at the hands of the Security Council. Instead, all five of these states referred to the AU as being the primary instigator of any further peace process or international intervention.

The product of this debate was an understandably janus-faced Resolution that invoked Chapter VII, condemned *Janjaweed* and other violence, but stopped short of singling out the Sudanese government. Instead, Resolution 1556 gave the Sudanese government thirty days to disarm the *Janjaweed* and punish human rights abusers, threatening economic sanctions if they failed to do so. For some, such as China and Pakistan who both abstained, the resolution went too far, for others such as Western observers, the Philippines and the resolution's sponsors, it did not go far enough.<sup>56</sup>

### **Conclusion**

This half-way house has been contrived by the interaction of a number of trends. The first is that there is an emergent norm of humanitarian interventionism. International society cannot simply wash its hands of Darfur. It is fair to say that many Western states, particularly the US and UK, are genuinely concerned about the humanitarian tragedy unfolding there. The second trend, post Iraq, is one of increasing scepticism among developing states in particular, about the consequences of this new norm. Rightly or wrongly, much of the world believed that the use of humanitarian arguments to justify the war in Iraq was disingenuous. Worse, to them it was evidence that what they had long suspected but had, by the late 1990s, come to put at the back of their minds, was a political reality. Namely, that the idea that humanitarian intervention was a 'Trojan horse' to legitimise the projection of Western power. The effect of increased scepticism has been to raise the bar still higher on what may count as a legitimate humanitarian intervention in order to guard against the potential for abuse. Thus, although many states in Africa and elsewhere may be uncomfortable with Sudanese policy, they were not prepared to contemplate abrogating Sudan's right to non-interference. Prior to 11 September, Western states were occasionally prepared to bite the bullet and present strong humanitarian cases to the Security Council (Bosnia, Kosovo, Somalia, Haiti, East Timor) or to act outside the Council and defend their actions, reasonably successfully, in moral terms. That this did not happen in Darfur points to the third trend: the prioritisation of strategic interests over humanitarian concerns. As we saw in the Council debates, Western states were prepared to criticise Sudan and support outside intervention by a regional organisation. What they were not

prepared to do, however, was invest significant amounts of political capital by pressing the intervention argument themselves or providing material support. What Darfur demonstrates is that Western willingness to bear the political and material costs of humanitarian intervention has declined at the precisely the same time as those costs, especially the potential political costs, have increased.



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- <sup>1</sup> BBC World News (2004). 'UN Chief's Rwanda Genocide Regret', 26 March. <http://news.bbc.co.uk/2/hi/africa/3573229.stm>.
  - <sup>2</sup> BBC World News (2001). 'Blair Promises to Stand by Africa', 2 October. <http://news.bbc.co.uk/2/hi/africa/1575428.stm>.
  - <sup>3</sup> See Burke, Anthony (2004). 'Freedom's Freedom: America's Enlightenment and Permanent War', unpublished paper.
  - <sup>4</sup> President George W Bush (2004). '1994 Rwanda Genocide', 7 April. <http://www.state.gov/s/wci/rm/31350.htm>
  - <sup>5</sup> [www.whitehouse.gov/nsc/nss5.html](http://www.whitehouse.gov/nsc/nss5.html) 18 March 2004.
  - <sup>6</sup> This is Nicholas J Wheeler's term. See Wheeler Nicholas J,(2001). *Saving Strangers: Humanitarian Intervention in International Society*. Oxford: Oxford University Press.
  - <sup>7</sup> Guehenno, Jean-Marie (2004). 'Would the world let it happen again?', *The Australian Financial Review*, 2 April: 9.
  - <sup>8</sup> It is clear that the crisis in Darfur in 2004 constituted a 'supreme humanitarian emergency'. Reflecting on Resolution 1556, Anthony Clark Arend argued that 'if we are serious about what we said then we need to take the next step. Military intervention is what is going to be effective', in Cam Stephenson (2004). 'US set to review options on Darfur', *Chicago Tribune*, 31 August.
  - <sup>9</sup> The 1 million figure is based on the testimony of Roger Winter, Assistant Administrator, Bureau for Democracy, Conflict and Humanitarian Assistance, US Agency for International Development, before the House Committee on International Relation hearing on Sudan, 6 May 2004. The casualty figure is derived from numerous sources but see especially, Human Rights Watch (2004). 'Darfur in Flames: Atrocities in Western Sudan', 16, 5, April.
  - <sup>10</sup> 'Darfur: Africa's Hidden Holocaust?' *Herald Sun*, 11 April 2004.

- <sup>11</sup> Roger Winter, testimony before the Committee on International Relations, US House of Representatives, 6 May. Cited in Paul Williams and Alex J Bellamy, 'The Responsibility to Protect and the Crisis in Darfur', unpublished paper.
- <sup>12</sup> S/PV.4839, 10 October 2003; and S/PV.4978, 25 May 2004.
- <sup>13</sup> See Bellamy, Alex J (2004). 'Ethics and Intervention: The "Humanitarian Exception" and the Problem of Abuse in the Case of Iraq', *Journal of Peace Research*, 41, 2: 131-147.
- <sup>14</sup> Weiss, Thomas G (2004). 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, 35, 2: 135-153.
- <sup>15</sup> *Inter alia*: Brian Lepard (2002). *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*. University Park: Pennsylvania State University Press; Wheeler (2001) *op cit*; Martha Finnemore (2003), *The Purpose of Intervention: Changing Beliefs about the Use of Force*. Ithaca: Cornell University Press.
- <sup>16</sup> Secretary General's Annual Report to the General Assembly, 20 September 1999.
- <sup>17</sup> See Melvern, Linda R (2000). *A People Betrayed: The Role of the West in Rwanda's Genocide*. London: Zed Books; and Michael Barnett (2002). *Eyewitness to a Genocide: The United Nations and Rwanda*. Ithaca: Cornell University Press.
- <sup>18</sup> Chesterman Simon (2001). *Just War or Just Peace: Humanitarian Intervention and International Law*. Oxford: Oxford University Press: 231.
- <sup>19</sup> For more on this see Alex J Bellamy, Paul Williams and Stuart Griffin (2004). *Understanding Peacekeeping*. Cambridge: Polity: 179-181.
- <sup>20</sup> Wheeler (2001) *op cit*: 162.
- <sup>21</sup> This argument was put forward by Adam Roberts (1993). 'Humanitarian War: Military Intervention and Human Rights', *International Affairs*, 69, 3: 429-449.
- <sup>22</sup> Security Council Resolution 794, 3 December 1992.
- <sup>23</sup> See Sarooshi, Daniele (2000). *The United Nations and the Development of Collective Security*. Oxford: Oxford University Press; and Trevor Findlay (2002). *The Use of Force in UN Peace Operations*. Oxford: Oxford University Press for SIPRI: 166-218.
- <sup>24</sup> See Morris, Justin (1995). 'Force and Democracy: The US/UN Intervention in Haiti', *International Peacekeeping*, 2, 3: 391-412; and David Malone (1998). *Decision-Making in the Security Council: The Case of Haiti, 1990-1997*. Oxford: Oxford University Press.
- <sup>25</sup> This is one of the main arguments put forward in Wheeler's (2001) conclusion to *Saving Strangers*. I am not aware of any evidence suggesting that significant elements of international society reject the legitimacy of intervention authorised by the Security Council.
- <sup>26</sup> Independent International Commission on Kosovo (2000). *Kosovo Report: Conflict, International Response, Lessons Learned*. Oxford: Oxford University Press: 4.
- <sup>27</sup> Nigel White, cited by Nicholas J Wheeler (2001). 'The Legality of NATO's Intervention in Kosovo', in Ken Booth (ed), *The Kosovo Tragedy: The Human Rights Dimensions*. London: Frank Cass: 156.
- <sup>28</sup> ICISS, *The Responsibility to Protect*: 17.
- <sup>29</sup> Deng, Francis, *et al* (1996). *Sovereignty as Responsibility: Conflict Management in Africa*. Washington: The Brookings Institution.
- <sup>30</sup> [www.whitehouse.gov/nsc/nss5.html](http://www.whitehouse.gov/nsc/nss5.html), accessed on 18 March 2004.
- <sup>31</sup> Kofi Annan, Nobel Lecture, 10 December 2001 accessed at [www.nobel.se/peace/laureates/2001/annan-lecture.html](http://www.nobel.se/peace/laureates/2001/annan-lecture.html), 18 March 2004
- <sup>32</sup> Article 4 (h) of the Constitutive Act of the African Union, 11 July 2000.
- <sup>33</sup> In this paper I follow Barry Buzan as identifying international society as a society of states and world society as a society comprising non-state actors. See Barry Buzan (2004). *From International to World Society: English School Theory and the Social Structure of Globalisation*. Cambridge: Cambridge University Press.
- <sup>34</sup> Roth, Kenneth. 'War in Iraq: Not a Legitimate Humanitarian Intervention', *Human Rights Watch Report* (<http://hrw.org/wr2k4/3.htm>) accessed 22 July 2004.



- <sup>35</sup> Emphasis added, David Vesel (2004). 'The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World', *BYU Journal of Public Law*, 18, 1: 56.
- <sup>36</sup> Evans, Gareth (2004). 'When is it Right to Fight?' *Survival*, 46, 3: 63.
- <sup>37</sup> Weiss, Thomas (2004). 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, 35, 2: 135-54.
- <sup>38</sup> Reported in BBC Online, 'Mass Rape Atrocity in west Sudan', 19 March 2004, <http://news.bbc.co.uk/2/hi/africa/3549325.stm> (accessed 14 July 2004).
- <sup>39</sup> Cited in Human Rights Watch, *Darfur Destroyed*: 53.
- <sup>40</sup> Kofi Annan speech to the UN Human Rights Commission, Geneva, 7 April 2004. UN Press Release SG/SM/9197 AFR/893 HR/CN/1077.
- <sup>41</sup> Human Rights Watch, *Darfur Destroyed*: 51.
- <sup>42</sup> Anon (2004). 'Australia May Join Darfur Mission', *Daily Telegraph*, 28 July. I am very grateful to Sara Davies for bringing this to my attention.
- <sup>43</sup> Human Rights Watch, *Darfur Destroyed*: 51.
- <sup>44</sup> CBC (2004). 'African Union Sending Military Force to Darfur', 6 July, accessed at <http://www.cbc.ca/stories/2004/07/05/world/janjaweed040705>, on 27 July 2004; and Reuters (2004). 'African Union to Send Troops to Darfur', 5 July <http://www.alertnet.org/thenews/newsdesk/L05586590.htm>, accessed on 27 July 2004.
- <sup>45</sup> Human Rights Watch, 'Rwandan Troops to Protect Civilians', New York, 17 August 2004. Report emailed to author by Human Rights Watch.
- <sup>46</sup> I am grateful to Paul Williams for this point.
- <sup>47</sup> This point is developed further in Williams and Bellamy (unpublished) *op cit*, 'The Responsibility to Protect and the Crisis in Darfur': 12-13.
- <sup>48</sup> By 'political costs' I mean the costs incurred by potentially being seen to be acting illegitimately. They include (but are not limited to), the danger of diplomatic censure, rupturing cooperation on other political issues, and the loss of moral standing. 'Material costs' are directly related to this. They involve bearing the full material burden of intervention.
- <sup>49</sup> Thus, for instance, where objections have been raised to intervention they have tended to be on principled or prudential grounds other than maintaining respect for Sudanese sovereignty. A good example is Thakur, Ramesh (2004). 'Western medicine is no cure for Darfur', *Australian Financial Review*, 31 August.
- <sup>50</sup> S/PV.4978, 25 May 2004.
- <sup>51</sup> *Ibid.*
- <sup>52</sup> S/PV.4988, 11 June 2004: 4.
- <sup>53</sup> UNSCR 1547 (2004). Emphasis in the original.
- <sup>54</sup> S/PV.5015, 30 July 2004: 4.
- <sup>55</sup> *Ibid.*: 10.
- <sup>56</sup> Simon Tisdall described it as a 'dark study in disillusion'. Tisdall, Simon (2004). 'Brave talk but no action: Darfur gets a familiar response from the West', *The Guardian*, 3 August. I am grateful to Paul Williams for bringing this to my attention.

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