

*For a Charm of Powerful Trouble:*

## **Australian Politics in the Cauldron of Aboriginal Administration<sup>1</sup>**

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*A personal critique on the demise of ATSIC by*

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On this journey of resolution that we are on, if we are prepared to do what many great Australians before us have done and confront the issues of our “Unfinished Business” with courage and patience then our season of plenty will be close at hand.

When that time does come, there will be no need for us to seek the empty platitude of “sorry” from leaders who are incapable of sharing our vision or enjoying our shared company on this National journey.

*Patrick Dodson, Reconciliation lecture  
Parliament House, 25 May 2004*

### **INTRODUCTION**

Australia’s federal Aboriginal and Torres Strait Islander Commission (ATSIC) and more general national policy towards indigenous peoples have become major subjects of political discussion, dispute, and one-upmanship in Australia’s long-running 2004 national election campaign. Labor Opposition leader Mark Latham and Prime Minister John Howard have now put forward major proposals, although the extent of substantive difference, like the election date, remains to be seen.

On March 30, Latham and his shadow minister for indigenous affairs, Senator Kerry O’Brien, announced a new approach to ATSIC particularly and indigenous affairs generally. This pre-empted Howard’s long-anticipated but still unannounced policy to marginalise or demolish ATSIC. Howard and indigenous affairs minister Senator Amanda Vanstone responded snippily the same day, and apparently rushed forward their own cabinet consideration and announcement. Then, on April 15, Vanstone joined Howard in announcing a new approach, the centrepiece being abolition of ATSIC, root and branch. Howard was already feeling pressure in a high stakes personal political struggle with Latham on an entirely different subject, Australia’s role in the Iraq war. Now the vexed issue of ATSIC was suddenly tossed into the pot.

Introduction of ATSIC into the highest level of political debate was not entirely gratuitous. An unresolved crisis of ATSIC’s leadership, i.e., whether or not its elected chair Geoff Clark would be removed by Howard for alleged impropriety, had focused political, media, and public attention for a year or more on this one aspect of Aboriginal administration at the expense of more general and urgent matters. Many observers both indigenous and non-indigenous believed that if Clark had stepped down it could have saved the organisation and the cause of Aboriginal self-determination much grief. It is true that Clark and, for a long time, his former deputy, Ray Robinson, provided the Howard government and media with convenient distractions from and scapegoats for serious policy and program matters. But the outcome would surely have been similar. Howard’s animus towards indigenous organisations, indigenous autonomy, and indigenous aspirations is not only a defining characteristic of his political career, but a central element of his continuing electoral strategy, despite some commentators wishing to believe in his *mellowing*.

Whether indigenous policy will benefit from the high intensity of the present foofaraw is open to question. That is, white men shouting at each other as they position themselves for advantage *vis-à-vis* an electorate famously unsympathetic to indigenous needs other than basic legal uniformity may do little to untangle the complexities of

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<sup>1</sup> In the famous words of the Second Witch in the Cauldron scene, *Macbeth* IV, i, ‘Eye of newt and toe of frog,/ Wool of bat and tongue of dog,/ Adder’s fork and blind-worm’s sting,/ Lizard’s leg and owlet’s wing,/ For a charm of powerful trouble,/ Like a hell-broth boil and bubble.’

<sup>2</sup> The date indicates when the last revisions were made. A preliminary version of the paper was ‘Federal Labor’s New Indigenous Policy’, 31-3-2004, with a second version in mid-May. My special thanks to CH and SC for getting me started.

<sup>3</sup> This paper is dedicated to the memory of Clem Chapple, 17-7-42 to 29-4-03, my lifelong friend who travelled with me in my early days among Canada’s renascent indigenous peoples and remote places, and who left verse reminders to make sure I took warm socks to the North Magnetic Pole on my first visit in 1966. *And thus the whirligig of time brings in his revenges.*

current indigenous politics and policy. On the other hand, *any* policy debate may be useful. The past several years' moratorium on serious discussion of Australia's deepest social problem must end.<sup>4</sup>

In notes and comment below I will offer some context for the debate. It may be useful to begin with some generalities about the indigenous rights and policy situation in Australia because it differs in significant ways from other 'first world' countries.

### ***INDIGENOUS PROBLEMS AND ISSUES IN AUSTRALIA***

Indigenous problems and issues in Australia are relatively clear.

- There are no founding or framework documents or guidelines for Australia's indigenous-white or indigenous-government relations. Elsewhere one finds New Zealand's Treaty of Waitangi, or 1763 British enactments for Canada and USA, or belated incorporation of international law formulations into national constitutions like the Norwegian 1980s interpretation of Article 27 of the 1966 International Convention on Civil and Political Rights (ICCPR) in a constitutional clause recognising a bi-national country and Sami rights.
- Until Australia's High Court *Mabo* decision in 1992, *terra nullius* was not only the prevailing legal fiction in Australia but a *de facto* national policy, implying to many that the post-1788 white settlers need pay no social, legal, or political heed to the original inhabitants and owners of the continent.
- Power and responsibility for indigenous affairs in Australia were left to the sub-national units – states and territories – which also controlled land and resource development and settlement. The national authorities were only let into the picture legally from 1967 through a national constitutional referendum, and not very much in practice even today. (The usual case in the British Empire was a higher level of authority, i.e., London or dominion capital, trying to protect indigenous rights at some remove from the land-hungry and develop-minded settlers dominating local or regional – or state or province – authorities. Australian historians have now shown that it was not always the British intention to abandon that general pattern in Australia.)
- *Australia is today morally bound by agreements it has signed to respect the cultural and political autonomy of indigenous peoples, and their territorial rights!* After 1945 the multilateral negotiation of and agreement to international rights conventions (in whose development Australia played an honoured part), and their implementation and interpretation, was perhaps the most important influence in the evolving ideals and standards of indigenous policy and rights world-wide, especially in Western liberal democracies. This process is enriched by practical politico-administrative experience in pace-setting countries (such as Australia in better days).<sup>5</sup> While the impact of international principles was not always instantaneous in the faraway Southern Hemisphere, it was respected at least rhetorically until Howard's government attacked the international rights system and United Nations in the late 1990s.<sup>6</sup>
- Post-1945 nation-states in the so-called 'first world' also quickly established as a principle and practice that indigenous peoples even in remote and inconvenient areas were part of national society and entitled to the same 'rights' to high quality public services as all other citizens, even if it took a generation or more to implement effectively. Such 'citizenship rights' were due regardless of any additionally recognised indigenous rights (e.g., through native title or treaties) or political communities (e.g., Torres Strait or Nunavut). Attempts to glorify such basics as noteworthy national achievements or 'practical reconciliation' may be good public relations for gullible audiences but are an international 'first world' minimum. As the late Aboriginal leader Charlie Perkins said in almost his last public utterance, nobody boasts that white children are able to go to school.
- The last decade's public discussion of indigenous affairs in Australia has hinged on false oppositions. (1) *Either* symbolic recognition, rhetorical documents, and statements such as an apology for the stolen

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<sup>4</sup> For the June 2001 disruption of policy debate see 'Australia' in *The Indigenous World 2001-2002*, International Work Group for Indigenous Affairs, Copenhagen, 2002, pp 188-195.

<sup>5</sup> A multilateral cooperation mechanism like the Arctic Council is another useful sort of forum. In that Council both nation-state governments and indigenous peoples work together on problems big and small. Embracing the USA, Russia, Canada, the five Nordic countries, and the indigenous peoples of all those countries. For information on the Arctic Council see its website, and the website of its Indigenous Peoples Secretariat – [www.arcticpeoples.org/](http://www.arcticpeoples.org/) The Commonwealth of Nations (former British Empire) has also been trying both rights and cooperative approaches in recent years. See the Commonwealth Policy Studies Unit website for information on and research produced by the indigenous project: <http://www.cpsu.org.uk/index2.htm>

<sup>6</sup> In the same weeks of political debate covered by this paper in early 2004, Howard tried to use special incentives to train male school teachers as a tool to entice the political class to crack open Australia's national rights framework and begin dismantling national rights legislation and institutions.

generations, *or*, practical nuts and bolts community service programs are mutually exclusive choices, the only ones on offer (with any sensible person preferring the latter). But I have never heard any indigenous person suggest that symbolic politics alone were a cure or cure-all. (2) *Self-determination*, with a loaded meaning implying separation from Australia or withdrawal from modern society, or *assimilation* into 'the mainstream', is the choice facing indigenous peoples. Again, the first option is supposed to be silly, and the latter sensible. But in reality the desired policy accepted by most Australian indigenous leaders combines some form of autonomy within Australia with greater access to the benefits of contemporary economy and society.<sup>7</sup>

- The main 'public debate' or 'policy discussion' on indigenous issues in Australia in recent years has consisted of polemics led by Prime Minister Howard or his ministers – an avoidance of discussion, one might say, using the bully pulpit of high office to stifle serious discussion with one-liners and putdowns.<sup>8</sup> Meanwhile, select commentators<sup>9</sup> bellow support for the government's demolition of indigenous policies and institutions.
- *Control* of indigenous peoples remains the main priority of governments in Australia, rather than their *consent* to governing institutions or policies. At one level this means tough policing, and 'law and order' auctions at state elections. But it also means that talk of 'partnerships', etc., at state government levels may be little more than self-management, i.e., some black involvement in White Man-designed or sanctioned 'solutions'.<sup>10</sup> The White Man only episodically recognises indigenous people(s) as legitimate political communities, potentially or in fact, e.g., in Torres Strait or the Tiwi Islands.
- In mid-June 2001, uproar over accusations and recriminations among some of the country's highest profile indigenous personalities, including 20-year-old rape allegations against ATSIC head Geoff Clark, redirected all indigenous discussion to indigenous family and community violence and related squalor. 'Whites including politicians, newspaper editors, and commentators feigned surprise and outrage at horror stories now widely reported in lengthy articles and TV items around the country.'<sup>11</sup> *Feigned* because books, articles, oral and visual reports about the real Aboriginal Australia have been appearing for many years. Worse, Aborigines and their non-indigenous friends and supporters were accused of having "hidden" this unpleasant information. ... The shrill excess is clear. Surely white reactions would not be so extreme, so opportunistic, so *grateful*, if they did not allow Australians the chance to express themselves both vehemently on these issues – and at no moral or material cost (IWGIA 2002).'
- The frequent corruption and other scandals revealed at the highest levels of 'mainstream' state and federal governments do not call into question the right of regions or white people to govern themselves. But ATSIC has been under endless special scrutiny and special audits since the Howard government came to power. Complaints from indigenous people about ATSIC have been used by government and media to discredit the organisation; similar complaints could be mustered about any ministry or official agency among its client group, whether farmers or pilots or nurses or students. ATSIC has been a lightning rod for any material or other grievances, saving the White Man and his governments much deserved blame.
- Australia's indigenous peoples suffer extreme socio-economic disadvantage, but Australian governments have lacked the political will to put the funding or persistence into issues of regional or racial disparity such as have solved socio-economic problems elsewhere, e.g., North Norway.<sup>12</sup> For blacks and whites alike these basic material and physical needs are in part a screen behind which more difficult and complex issues lie, issues which will leap to the fore when basic community well-being is achieved. We know this of present-day war-ravaged Iraq, and we want to get past its rowdy days so that we can talk about the big-ticket governance and 'civilisation' issues we think we understand.
- The abuse and dismantling of ATSIC bit by bit over the last years has shown disdain for the cultural and political autonomy of minority peoples in a 'first world' country, more like Turkey *vis-à-vis* Kurds, or Central Europeans and Roma. Unless and until these peoples are recognised as able to represent themselves in discussion and policy negotiation with senior governments, policy and program outcomes will be meagre.

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<sup>7</sup> This is also true of most indigenous leaders in other 'first world' countries.

<sup>8</sup> In public the government pitches its line in mass advertising terms, often with slogans, refusing to be drawn into any real dialogue or to make any intellectually or morally coherent defence. In private the ministry falls back upon its supposed dignity, talking down or demeaning those who would question it.

<sup>9</sup> Polemicists in the mass media often seem more intent on attacking old foes of liberal or Left orientation than in helping indigenous people or communities. Much rhetoric, little sense, a faith community closed to outsiders, one might say.

<sup>10</sup> *Self-management* means that local people carry out (and take the blame for) policies set by higher authorities, e.g., indigenous people carrying out white ideas in our Australian example. Unfortunately some governments in Australia have used the term, or now use it, as if it had a bright and happy meaning, something like self-government or self-determination.

<sup>11</sup> For a serious look at the source of these indigenous problems, see Kidd 2000.

<sup>12</sup> Over many years I have written to parliamentary and other official inquiries at state or provincial or federal level, urging that they visit North Norway, believing that such visits would shame them to tackle regional and indigenous poverty in Australia, USA, or northern Canada.

- Australian governments view indigenous programs and policy as a sub-set of the White Man's welfare-state programming, an administrative matter, rather than a fundamental political relationship from which negotiated and agreed outcomes flow. Too many people prefer to think of Aboriginal peoples and Torres Strait Islanders as failed whites who, given a shave, 'three squares', and the 9x table will become 'regular chaps', albeit with darker skins. Cultural and political autonomy are basic aspirations of indigenous life in Australia as in other countries, feelings merely reinforced rather than eroded by white national rhetoric demanding 'unity' (read: *uniformity*).
- 'Mainstreaming' services for indigenous peoples is not the future but a failed past. The reason why governments have specialised bureaux dealing with indigenous issues until the transfer of full autonomy to indigenous people themselves is that practical experience dictated such need. Perhaps the only way to remove such a need is where a regional people become self-governing and have their own sufficient institutions. Even in such cases, e.g., Greenland or Nunavut, there may be liaison or various residual functions required within the nation-state to manage the relations of peoples and polities.
- Moreover, indigenous peoples have needs and aspirations which do not fit neatly within 'mainstream' systems, whether because of their inconvenient locations, socio-economic profile, legal status (or lack of such status, as in unrecognised property rights), or other factors. Whatever its precise functions, a specific indigenous affairs element in executive government is usually necessary in any country. Where ideology or a facile sense of public economy removes such institutions they must be re-invented soon for quite practical reasons.
- There is insufficient recognition of the economic resources, traditional economies, and land/sea/resource rights and traditional economies of indigenous peoples, or the importance of such a base for successful communities. For instance, the Tropical coasts of Australia from the Coral Sea around through Torres Strait and the Gulf, around the Top End, and down the Indian Ocean shores, would benefit from a bottom-up indigenous coastal and marine environment and development strategy to ensure healthy and productive communities, and better protect the environment for all Australians (Sharp 2002; Jull 1993).
- There is little – or at least insufficient – consensus within Australian society and political circles that indigenous injustices and disadvantage are serious social problems which must be solved. Governments can therefore avoid them and their costs, and make some small gestures, e.g., new school playground equipment, to woo local indigenous votes at election time. It is habitual for 'sympathetic' white politicians and party activists to assure indigenes that it is *politically impossible*, or *unrealistic*, or *premature* to act on the big issues.
- Some Australian governments, including the present national government, use indigenous peoples, a poor and dispossessed territorially-based visible minority, as scapegoats for populist electoral politics. Liberal democracies abroad would think this beyond the moral pale, irresponsible, or dangerous. If this continues in tandem with sharp socio-economic disparities, injustice, and discrimination, it is a virtual invitation to eventual political violence.
- The Howard government has rolled back the federal recognition of indigenous autonomy growing since the 1970s, and has encouraged the spurious debate or false dichotomy on assimilation vs. 'self-determination'. What Howard calls a 'new approach' is no more than the general prejudice of provincial areas of the English-speaking world in which he grew up in the mid-20<sup>th</sup> Century.<sup>13</sup>
- Other countries with political ideals and institutions like Australia (e.g., New Zealand, Canada, USA, Norway, Sweden, Finland, Denmark) have seen evolve positive ways and better socio-economic outcomes in indigenous relations with majority populations. Far from the indigenous silence and disappearance from view which Howard set as his goal on taking office, these renascent peoples energise previously marginal regions and bring new dimensions to public life as they work through old problems together with their non-indigenous friends and senior governments.
- Indigenous reconciliation or accommodation, and success in healing ethno-cultural division generally, requires active political leadership.<sup>14</sup> In the 'first world', as in much of the rest of the world, persistent moral and

<sup>13</sup> Familiar to the author from his 1940s childhood in a Depression-maimed lumber town in the Upper Ottawa Valley.

<sup>14</sup> In a curious caricature of that, Australia's current prime minister has refused any proposals but his own late British Empire assimilationism in respect of indigenous peoples, and after years of such refusal told *The Australian*, perhaps (but not necessarily) facetiously, that the public had now accepted his views because he didn't hear any more calls for change. See Megalogenis interview, 'PM's reconciliation hopes', 6-5-2002: "I hope it means we are inching towards a more sensible and harmonious outcome" [Howard said!].

intellectual leadership by governments in inter-cultural relations is one of the basic requirements of post-1945 politicians and governments.

- Most amazingly, Howard and some ministers have also thrown their rhetoric and weight behind a recent movement of denialism in indigenous affairs, the so-called ‘history wars’, now centred on the writings of Keith Windschuttle and others in *Quadrant* magazine.<sup>15</sup> The denial of past massacres of Aborigines, of the Tasmanian exterminations, of the removal of children from their families in generation after generation, etc. is the more remarkable in a country where many people, apparently including Howard, believe that Germany and Japan have not sufficiently faced up to the evils of their mid-20<sup>th</sup> century rulers.
- *Control* usually trumps *consent* in Australian policy thinking. The brave new indigenous world beyond clean water, basic shelter, and community safety will be a shock to many when it arrives. Indigenous peoples do not wish to be parcelled and then stored away out of sight; they seek ongoing participation in Australian life as living, choosing, and decision-making communities.
- Australia’s *control* mentality also reflects local values of social order and convention, rather than recognition that larger issues of cultural difference, ethno-political identity, or issues of the legitimacy of political authority are at stake in indigenous-settler relations. It presses into every nook and cranny – with renewed force since mid-2001 – so that there is virtually no political or cultural space for indigenous peoples except those living in remote locales.
- ‘Indigenous policy’ as a term used by Australian governments today means rather less than meets the eye.<sup>16</sup> It focuses on basic community services, an entirely worthy and urgent matter, rather than the larger questions which the term implies elsewhere. It is about getting indigenous people to the toilet, not the treaty table.
- Indigenous ethno-political movements have their own internal logic. They will not be stopped or diverted merely because the nation-state majority people among whom they live find their demands inconvenient. Opposition will usually strengthen them.
- In recent years Australian governments have rolled back or overridden long overdue court recognition of basic indigenous rights. They have berated people who already are the poorest, sickest, most unemployed, and have the most pent-up sense of injustice of any in Australia. They have cut funding and wound up organisations. They have denounced ‘privilege’ and ‘special benefits’, and both attacked and undermined the leadership of this group who are already discriminated against in recreation, work, study, shopping, public services, and most other milieux. They have abused indigenous spokespersons for fighting unexceptional legal battles at home or issuing cries for support abroad. The Prime Minister has openly urged that indigenous peoples and concerns disappear from the news and he has wound up their visible leadership structures. Governments have denied the relevance of indigenous precedents and working improvements abroad while they refuse to listen to proposals for change at home. They have done almost everything they could to refuse and remove hope, and then they want Aborigines and Islanders to prove their loyalty and commit themselves to national unity. And yet they assume that should the country face political violence it will necessarily come from foreign evildoers rather than as a result of public policies at home.<sup>17</sup>

### ***THE HOWARD ERA***

The Howard government has seen indigenous issues not as problems to solve but as an electoral opportunity to appeal to popular anti-indigenous feeling among sections of the non-indigenous public. His party head was brought into the national machine from the Northern Territory where he ran and won elections by playing on anti-Aboriginal sentiment.<sup>18</sup> In other ‘first world’ countries, national governments, political parties, and other national entities rein in the socially and culturally renegade utterings of their hinterland cowboys in the interests of national self-esteem and international reputation, but not so with Howard who is ‘original’ in this respect. His suspicion of social and cultural diversity is remote from the political and intellectual mainstream of the post-1945 ‘first world’, and invites voters, general public, and officialdom to behave badly.

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<sup>15</sup> See Manne 2001; Manne 2003; Macinture & Clark 2003; and Windschuttle 2002. This movement built on some unimpressive books of the 1990s which trivialized indigenous policy and imperatives and attracted gullible sections of the press.

<sup>16</sup> I only truly realised this fact of vocabulary while writing this paper.

<sup>17</sup> E.g., Williams (2004) on terrorism, p. 112: ‘Long-term resolution is less of a priority for many government agencies because they benefit financially from fighting terrorism at a tactical level. ... Resolving terrorism longer term confers no institutional benefits and might well put bureaucrats out of a job. Churchill is reputed to have said that politicians look to the next election, while statesmen look to the next generation.’

<sup>18</sup> The Northern Territory in Australia has the usual ethno-political character and conflicts of indigenous hinterlands in first world countries, see, e.g., Jull 2001b; 2003a.

When the United Nations or others have criticised Australian indigenous policy and rights failures, and sometimes when they haven't done so yet, the Howard government has resorted to public threats and abuse, most notably when Kofi Annan visited in early 2000 (IWGIA 2000). Howard *et al.* deny the relevance to indigenous issues in this country of processes, thought, or action outside of Australia. This is portrayed as worthy national assertiveness. Traffic lights on city streets and sea lanes also hamper freedom, but are generally thought better than having the wilful or intoxicated crashing around randomly and endangering others. Maintaining the moral consensus on racial and other internationally sensitive issues is no less risk-related, e.g., Norway's current vagaries in indigenous policy (Jull 2003c). We are all in this world together, as the Iraq diversion increasingly reminds us. But the Howard government accepts moral responsibility in the world only when it suits itself, e.g., US-encouraged bluster *vis-à-vis* Iraq, North Korea, France, even Russia.

From early/mid 2001, indigenous relations policy became conflated with the issue of other non-Anglo and/or non-white peoples – notably Asians, Middle Easterners, and people in flight to Australia from brutal regimes or hopeless social settings elsewhere. The problem became, as the saying goes, 'The Other'. Of course, this is a very contemporary problem, and like nuclear power, pesticides, international trade law, and toxic wastes, one counts on governments to provide intellectual and moral leadership on the basis of the best available domestic and international expertise. Unfortunately, that has not been Howard's way. Acting as if Australia were an island unto itself, he was surprised early in his tenure that statements made for home consumption should be picked up or held against him abroad, but over time has apparently chosen to tough it out and endure overseas derision.<sup>19</sup>

The 'policy' of the Howard era has had three conflicting dimensions. (1) Howard has said repeatedly that indigenous peoples should disappear as a public issue, acting and hoping to dissolve them into the British and Irish Australian social 'mainstream'.

(2) Notwithstanding the first point, Howard has talked and fretted endlessly in public about indigenous peoples and issues since first coming to power. He has been unable to leave the subject alone, especially in his first five years in power, and now again, it seems. We may have to await a psycho-biography to find the source of this obsessive interest. (3) He has used indigenous people and white prejudices against them consistently and persistently as a rhetorical scapegoat rather than as a set of problems to solve.

The government's policies *vis-à-vis* indigenous peoples have been Howard's policies; his ministers have hardly dared speak on the issues till he has set the direction. He has some sort of bee in his bonnet about them, to be sure. The fact that he has been able to run rampant on the subject, and that a contemporary nation-state has allowed him to do so, will intrigue Australia's future historians.

Nonetheless, even by these standards an astonishing appeal has been made to him in the current climate. On the hot summer night of February 15/16 the inner Sydney district of Redfern, a virtual Aboriginal ghetto, exploded in rioting. This occurred just before, and certainly influenced, the political rhetoric and decisions about ATSIC soon to follow. The Liberal *state* opposition leader based in Sydney said the district should be bulldozed, and that was the only Liberal position for about 10 days. This was remarkable restraint for a usually voluble federal government.<sup>20</sup> But quick on the uptake was a notorious Melbourne *Herald Sun* columnist, Andrew Bolt, who wrote in 'PM's riot rescue' (20-2-04):

*It took the Tampa<sup>21</sup> to save John Howard from what seemed certain defeat at the last election. Now, again facing defeat, Howard may be miraculously saved by his second Tampa -- the Redfern race riot. ... How much John Howard needs a bit of that magic. And what a reason he's been given to echo [New Zealand's new conservative opposition leader] Brash's warnings, now that we've seen in the Redfern riot the future of the ethnic separatism that our governments have so foolishly funded. It is already racist and divisive enough that we have an Aboriginal-only "parliament" in ATSIC, as well as taxpayer-funded Aboriginal-only services such as the Aboriginal Legal Service, Aboriginal health services, Aboriginal housing bodies and the like. ... And we can see already what our drift backwards into tribalism is bringing us. Squabbles over which race or*

<sup>19</sup> The unkindest Australian cut has been the comments of Howard, Ruddock, and foreign minister Downer about foreign eminences as morally beholden to nasty regimes at home, e.g., in the case of UN rights experts. This is particularly unfair because Australia has countless fine individuals working abroad in the full range of humanitarian and progressive causes, persons who should in no way be held accountable for the moral and intellectual obscurantism of Howard and his small circle at home.

<sup>20</sup> Howard eventually said, when asked about Redfern and race riots generally, 'I think they arise from a combination of factors. I think they arise from the total breakdown in family authority within aboriginal communities. I think they sometimes arise from a policy perhaps of treating different groups in the community differently. The solution very much lies in treating everybody equally and as part of the mainstream as far as law enforcement is concerned.' Latham wondered aloud where the fathers of the rioting children were at the time. Those close to the scene remarked that the fathers were either dead, in jail, or drugged out. And, of course, it is precisely because the Redfern blacks, and blacks in general, are not 'part of the mainstream' in socio-economic terms or political power that violence becomes logical.

<sup>21</sup> The *Tampa* was a Norwegian freighter which rescued several hundred drowning refugees in August 2001 off north-western Australia and which provided Howard a carefully staged episode denying them a landing in Australia, thereby attracting world derision and 77% Australian public support, turning the 2001 election Howard's way and allowing him to pose as a man of steel against his continent's 'enemies' (Ward 2002; Charlton 2002; Marr & Wilkinson 2003).

*ethnic group deserves what. ... Arguments over whose ancestors did what to whom, and who should now pay. The parading of old wounds and endless demands for compensation. The insistence on racial differences most of us would otherwise have never noticed. The vilification of our past and the cramping of our future. Redfern.*

He then concludes,

*This is the issue that could be Howard's new Tampa – an appeal to voters to save this country from the New Racists who seek to divide us, using our government and our money.*

Nothing could better illustrate the political culture of John Howard's Australia.

### **ALAS, POOR ATSIC!**

ATSIC has had major external problems. Perhaps the biggest is that the Howard government has been unwilling to recognise it as institutionally legitimate. Indeed, it is uncertain that Howard would accept *any* indigenous body as legitimate because he is a forthright assimilationist as he has made clear in public interviews in recent weeks. A typical comment during these weeks refers to the idea of 'separate' bodies, and he said the same thing many times in similar words, e.g.,

*I have made it very plain that I don't think having a separate body is a good idea. I have a very strong preference for the services available to indigenous people to be delivered through mainstream agencies. Obviously where there are pockets of disadvantage, you should have some special programmes. But I don't think the ATSIC experiment has been a success. I think it has been a huge failure. (Prime Minister's transcript, Interview on radio, Perth, 1-4-04)*

As noted above, there is a lack of indigenous political space allowed in Australia. Again, Howard and many others do not accept that indigenous people have the right to any political institutions at arm's length from the White Man's control, guidelines, or pre-set goals, but only such delegated roles and outcomes as the White Man provides. Howard and others have used, and allowed others to use ATSIC as a scapegoat, both for anti-indigenous feelings among the public and in frustration with the persistent socio-economic woes of indigenous peoples. ATSIC's visibility has made it a convenient target for many reasons, few of which have anything to do with its actual role or performance.

ATSIC has also had a set of inherent problems from Day One.<sup>22</sup> There has been a fundamental and irreconcilable conflict between its roles as an integral part of the federal public service and its stated function as an elected representative (in two tiers of regional and national indigenous spokesbodies). There has also been conflict between those who wanted a strong centralised administration able to wield the cudgel against powerful government and other interests, and those who wanted the locus of power to be the local ethno-cultural region. (Torres Strait Islanders used their ethno-regional 'difference' to demand and win their own regional institutions separate from ATSIC.<sup>23</sup>) There has been a conflict between ATSIC regional councils in some areas, ones which serve everyone indigenous living today in the city of Cairns, say, with the local traditional cultures long occupying the area. Such regional bodies have tended to dissolve cultural difference and act like new administrative units, sidelining traditional ethno-cultural units. Also, ATSIC has been a highly visible federal body with limited roles or funds, in a country where most indigenous programs and powers are the responsibility of the state and territory governments. Furthermore, indigenous people are happy to complain about ATSIC's defects in much the same way any white Australian complains about his/her state and national government, but relatively few Ozzies apart from some die-hards urge abolition of the State of Queensland.

In the context of these two sets of problems above, ATSIC probably could not have succeeded. It may be argued that if ATSIC head and deputy head Geoff Clark and Ray Robinson had departed quietly rather than sought and gained re-election in the last round of ATSIC elections, they would probably have no more than postponed or slowed the Howard's government attack on ATSIC. Meanwhile, both men have been accused of rape and other crimes at various times, and mention of these accompanies their every reported utterance on whatever issue in press and broadcast media. This fact, given the white public's fixation on indigenous dysfunction since June 2001, has undermined ATSIC and its influence at every turn. Clark is undoubtedly right when he argues that as duly elected indigenous leader he should not

<sup>22</sup> ATSIC was misleadingly promoted in early days. The public were told that it was the only such indigenous administration with elected representation in the world. While that may have been true, it was not mentioned that countries serious about indigenous affairs got rid of such administrations and handed governing powers directly to indigenous people, as in Greenland or Canadian self-government programs. Also, foreign indigenous leaders were lunched by Australian diplomats abroad, and their enthusiastic applause fed back to us in Australia. What those Canadian and other indigenous leaders were not told, however, was that ATSIC was intended as a substitute in Australia for the real self-government powers the others all sought, a trade-off none of those others would be prepared to make. But now that early official enthusiastic disingenuousness all seems very far away.

<sup>23</sup> Like Inuit in Canada, the Islanders have been able to make the most of their different style of doing things to persuade governments that they are more 'reasonable' and pragmatic than other national indigenous groups. But Islander or Inuit quests for regional sea rights, and political and cultural autonomy or decolonisation, are essentially the same as others seek.

be capriciously removed by government, and former indigenous affairs minister Ruddock undoubtedly wrong when he pressed in mid-2003 to prevent Clark from attending the United Nations as representative of indigenous Australia. But given the political 'atmospherics', such niceties are easily lost.

### **LABOR'S NEW PROPOSALS**

The Latham-O'Brien proposals were a relief because more promising than other Labor voices like the former minister Gary Johns<sup>24</sup>. The main point is that the national ATSIC Commission, discredited by media, public misunderstanding, official manipulation, and the sensational claims made about the activities of some of its members, would be abolished and power transferred to the existing ATSIC regional bodies. Labor says that the Howard government has been merely gutting ATSIC and allowing a vacuum to develop. Latham sees the way ahead as one of cooperative COAG work on indigenous programs. Wisely, he does not wish to offer detailed policy now but rather 'a set of principles'. The details will depend on thorough consultations, within governments and with indigenous peoples. (Democrats indigenous Senator Ridgeway noted that the announcement itself was produced by a lack of consultation, while Aboriginal law professor Larissa Behrendt feared that it will be seen as 'patronising and paternalistic' [2004].) Finally, Labor would offer to the Stolen Generations the formal apology they have sought in vain from the Howard government, referring to decades of government policy which saw indigenous children removed at birth or in early years and misplaced forever (Jull 1998; Haebich 2000).

The Labor emphasis on consultation is welcome. The talk of regional indigenous governance, and of decentralisation, are certainly good news for remote and rural indigenous communities. Of course, it would be a very innocent person who would predict a brave new world when we hear that the same old gang of state authorities and COAG (Council of Australian Governments, i.e., heads of federal and state governments in conclave assembled) are being charged with new wonders, and 'partnerships'. Indigenous people will want to see some results.

Gary Johns complained in *The Australian* that 'Labor believes in collective self-determination and the Government believes in individual self-determination' ('Abolishing ATSIC is state of true reform', 1-4-04). Perhaps the most important thing about the Labor proposals is a renewed commitment by a Labor government-in-waiting to talk with indigenous leaders about real issues. That is the necessary starting-point for all else.

### **HOWARD'S PRONOUNCEMENT & NEW POLICY**

One need not support indigenous rights or political reform in general to doubt Howard's approach, but only measure it in terms of established parliamentary and liberal democratic norms. On April 15 the Prime Minister and Vanstone announced the government's new policy. There are many indications that the announcement was a 'rush job', triggered by Latham's quick move, despite Howard claiming at the time that his government had made 'a very extensive examination of indigenous affairs policy'. Unfortunately *part* of this claim may be true: many Australian officials have come to believe that 'indigenous policy' means the provision or delivery of basic physical community services (water, sewage removal, garbage pick-up) and basic schooling, health care, and police facilities. These matters have, indeed, been occupying state and federal government workers, albeit not with the sort of *can-do* approach or self-belief or results of Norway which rebuilt its North after 1945.

The indications are strong that the Howard policy *pronouncement* was rushed (full transcript online [http://www.pm.gov.au/news/01\\_news.html](http://www.pm.gov.au/news/01_news.html)). It seems also guided in some of its substance by the timing and content of Latham's proposals. That may account for some of the remarkable things said. Also, the content seems free of policy experience or expertise, driven rather by facile ideology. For instance,

*We believe very strongly that the experiment in separate representation, elected representation, for indigenous people has been a failure. We will not replace ATSIC with an alternative body. We will appoint a group of distinguished indigenous people to advise the Government on a purely advisory basis in relation to aboriginal affairs.*

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<sup>24</sup> In a recent major paper given in Chile, *The Gulf Between Aboriginal Policies and Aboriginal People in Australia*, to Libertad y Desarrollo Institute, Santiago, Chile, on 6 June 2003, <http://www.ipa.org.au/people/hpjohns.htm>, Johns began: 'The tragedies of Aboriginal society in Australia are the result of a nomadic, pre-literate, animistic gerontocracy being exposed to a rationalist, liberal democratic, market society. That elements of Aboriginal society remain intact is remarkable. It is a reflection both of the resilience of the Aboriginal ways and the benign intent of the dominant society towards Aborigines. Since European settlement in 1788, many Aborigines have successfully made the transition to modernity. Those of more recent contact, the last as recent as 1984, are subject to a different policy climate and different conditions to those of earlier generations. A formidable difference is the prevailing intellectual orthodoxy that suggests that the transition can be undertaken at no or minimal cost to Aboriginal solidarity and Aboriginal culture.'

How could elected representation be a failure? Only by silence, surely. The real issue is rather that the White Man (or Howard's sub-group of whites) doesn't like what the elected people are telling him. A proudly self-conscious constitutional expert like John Howard knows that *elected representation* and *executive administration* are two very different things, two separate arms of the traditional three parts of government (with the judicial function as the third). As for appointed 'distinguished' people... is the Prime Minister serious? Suppose that the European Union or United Nations, tired of the Howard government's recalcitrance on issues like human rights, decided that it was a failure and they might more usefully consult on international measures with some distinguished Australians – say, Patrick Dodson, Malcolm Fraser, Lowitja O'Donoghue, and Margaret Reynolds?<sup>25</sup> Can we not already hear the howls of outrage from Howard, Downer, and Ruddock?

But for popularly elected representatives like Howard and Vanstone to dismiss a popularly elected body and seek to choose congenial and presumably compliant advisers is unimaginable. They need to be reminded by the Clerks of House and Senate of the principles of the political order which has placed them in the ministerial positions they occupy.

It is one thing to appoint some advisers for a new subject or policy area, as a prelude to further developments; it is quite another to replace a properly elected representative body because one does not like its members or opinions. This is unbelievable in a liberal democracy like Australia. It would be foolish for persons of authority and integrity to serve on such an appointed successor body to ATSIC unless on the firm understanding that they would have a particular task and short time-frame for completing it, e.g., the design of a new representative body or administrative system, or other new mechanisms for indigenous-white policy relations. They would inevitably be seen as 'Uncle Toms' by the indigenous public, and the authority of what they might recommend would be suspect. As European generals learned quickly among the Indian peoples of North America in the 300 years preceding Australia's first white settlement, picking leaders you like or imagine to be authoritative can be very costly if their own people do not accept them as such and/or if they cannot make deals stick. You may be massacred or out of pocket, or both. However, the time is long past when advisory appointed bodies can be taken seriously in indigenous or other ethno-political relations. Like Howard's earlier choice of 'compassionate' ministers, it is merely a sign of the sentimental inappropriateness of a bygone era.

Howard goes on,

*I do believe that it [ATSIC] has become too preoccupied with what might loosely be called symbolic issues and too little concern with delivering real outcomes for indigenous people.*

One could write a book on Howard's preferred 'symbolic' issues, including his ideological attack on Aboriginal uniqueness, his disdain for fugitives from West Asian torturers drowning or barely surviving at sea in their efforts to reach Australian safety, and abuse of the United Nations. None of these episodes survive serious scrutiny in terms of 'real outcomes', let alone as moral processes. His term in office is full of mixed-up 'symbolic' and 'real' measures, such as telling the UN head and world media that an indigenous human rights uproar about the Northern Territory was merely a domestic partisan political ploy (IWGIA 2000). On a day when the war in Iraq, doubts about the intelligence of the national intelligence bureaux, and abolition of ATSIC were dominating news media, he found time to discourse publicly on the innards of a 13-year-old and whether a change of sex was warranted. If the elected representatives of indigenous peoples wish to discuss issues the Prime Minister regards as 'symbolic', experience here and abroad would show that they have good reason and cannot be easily ignored. Not to mention the fact that ATSIC is not and never was an agency funded or mandated to solve indigenous socio-economic ills, which role is largely vested in the state and territory governments. In other words, Howard's argument here is what Australians felicitously call 'a beat-up'.

In those days Howard also took to denying Clark's political legitimacy, as in an April 21 radio interview with Alan Jones: 'Geoff Clark... does not really speak for indigenous people.' This is a fiat of arbitrary government, not a statement with any meaning. Most of the Australians I know say that John Howard does not speak for them, and they say that with feeling. Nevertheless, Howard will continue to speak for them and for all the rest of us internationally until removed by act of God or the voters.

Whatever one may think of the problems caused for ATSIC by its leaders Geoff Clark and Ray Robinson persisting in their electoral careers despite bad publicity in the daily news media, they were duly chosen by the people they were trying to serve. Whether they will be remembered more as flawed politicians who overstayed their welcome (not unlike Howard himself, many might say!) or as martyrs to arbitrary white political power, few have questioned their abilities as effective advocates and executives in their happier days. Furthermore, personal conduct is hardly justification for winding up a national representative structure and removing the opportunity of whole peoples to speak on national

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<sup>25</sup> For non-Australians' benefit, Patrick Dodson is the most widely recognised Aboriginal leader and founding head of the Reconciliation Council; Malcolm Fraser, the former Liberal prime minister world-renowned for his fight against *apartheid*; Lowitja O'Donoghue, an elder statesperson of Aboriginal Australia and founding head of ATSIC; and Margaret Reynolds, former Labor cabinet minister, spokesperson for indigenous rights, and Commonwealth of Nations chair for human rights issues.

policies and programs affecting them. Federal and state cabinets have not been immune from serious improprieties in recent years, including premiers' offices, but nobody would say that the White Man was unready to govern himself.

As for Vanstone, perhaps as a good sport eager to share her leader's opprobrium, she brought in South Africa, claiming that ATSIC was a form of *apartheid*, as in,

*"Where people say we have to have a separate system I say, well, there was a country once where we wouldn't play cricket because they had a separate system," Senator Vanstone said.*

(‘Blacks reject advisory body’, The Australian, 17-4-04)

This spurious use of *apartheid* has become an international litmus test of reactionary silliness in discussion of indigenous issues. It caused an uproar when Vanstone used it, too, although it was not clear that she wanted to understand why. One had hoped for more from this new indigenous affairs minister. There can be no similarity between bodies established to provide particular help for disadvantaged people or people with particular needs (cancer patients, the poor, whomever) and those set up to dispossess, marginalise, and exclude them as in *apartheid*. The remark could be seen either as a vote-grabbing appeal to rednecks or, like the whole policy announced, too quick and ill-judged.

Vanstone also chipped in on the advisory issue.

*Senator Vanstone said the group would be appointed on merit. There was "nothing special or sinister" in the Government choosing its own people.*

(‘Aboriginal representatives...’, Sydney Morning Herald, 17-4-04)

The implication is that elected representatives now dismissed were not chosen on merit, and that the personal choices of Howard and Vanstone would be more meritorious, and certainly would not be doubted. Why should we believe that Vanstone and Howard, being themselves elected, are meritorious or legitimate? Yet in Howard's populism, opinion poll or election day support is the only measure allowable, permitting him (at least in his own opinion) to break international conventions or moral law, or to ‘move on’ from any issue, as he chooses.

#### ***ANOTHER PRIME MINISTER, OTHER PEOPLES, SIMILAR ISSUES...***

Canada is so obviously similar to Australia in respect of history, institutions, and indigenous issues that there is often interest here in subjects such as Nunavut, apologies for removed and abused indigenous children, negotiated regional land claims agreements, etc. However, in the midst of the current Australian duel over national indigenous policy administration, a Canadian parallel went largely unnoticed. That is, a meeting extraordinary by Australian standards was taking place in Ottawa between Prime Minister Paul Martin and the country's indigenous leaders on April 19. Not only were some broad matters of principle happily agreed, but a committee of federal ministers and indigenous representatives will meet to work out the details. This is the sort of working mechanism which seemed possible in Australia in 1993 when Prime Minister Paul Keating and several ministers worked with Aboriginal and Torres Islander leaders to negotiate the first Native Title Act.

The Canadian meeting agreed that firm goals in terms of socio-economic outcomes must be developed by Cabinet and indigenous leaders jointly, and then applied to overcome remaining disparities in living standards and opportunities for indigenous peoples. This is the sort of process and approach which is surely congenial no less to Australian officials and indigenous organisations.

In the press release accompanying a major national speech a few days before (April 16) his indigenous meeting,

*Prime Minister Paul Martin elaborated on the five main priorities of his government going forward, identifying health care, learning, communities, Canada's role in the world and the plight of Aboriginal Peoples as the heart of his government's agenda [,]*

to quote the first paragraph in whole. On the indigenous theme, further,

*"True progress starts with a full partnership, and with all the rights and responsibilities on both sides that partnership entails," said Martin.*

For 10 years or more the Canadian government has formally accepted the political equality of indigenous peoples and devised laws, policy-making processes, and institutional reforms around such recognition. Obviously this requires significant changes in political and official habits, and does not happen overnight, but the process and goodwill are

inspiring. Although there is a national chorus of sceptics, as in Australia, the big items have been agreed and enacted from the 1970s through the early 1990s and are now irreversible, legally and constitutionally (Jull 2001a).

At the April 19 meeting itself, Martin said, among other things,

*Like you, I have been looking forward to this important day. A day which is the result of previous meetings we've had with the leaders of the five national organizations: the Assembly of First Nations, the Inuit Tapiriit Kanatami, the Métis National Council, the Native Women's Association of Canada, and the Congress of Aboriginal Peoples – all of whom are here today.*

*Canada would not be Canada without the Aboriginal peoples. Your distinct traditions, cultures and languages enrich Canada immensely.*

*... It is now time for us to renew and strengthen the covenant between us.*

*...  
And it is of utmost importance that we recognize the unique culture, lifestyle and environment of the Inuit peoples – and their increasing contribution to the realization of our northern dream.*

As a former adviser to Inuit I might say that Canada's 'northern dream' or fantasy had little real meaning or purpose until Inuit and other northern peoples seized the political agenda of the northern half of the country from the late 1960s and created a new sense of northern and national nationhood (Jull 2001b). But it would be churlish to quibble.

Like others in the present day, the prime ministerial speech-writers don't know that the singular of a key word is 'criterion', but anyway...

*The second criteria to ensure success: We have to demonstrate the political will to get on with the job of achieving our goals and sticking to them come what may. As Prime Minister, I am here to say that you have my commitment – and that of our Government. Our will is resolute. Our focus will not falter.*

To handle indigenous matters better,

*...our new Government announced the creation of a Cabinet Committee on Aboriginal Affairs, chaired by the Prime Minister. And I appointed a Parliamentary Secretary on Aboriginal Affairs.*

*We have also created a Secretariat on Aboriginal Affairs in the Privy Council Office to co-ordinate the Government's work.*

*But more changes are needed. For example, Inuit leaders have for years pointed to the absence of a secretariat in the government that focuses specifically on Inuit issues. And frankly speaking, there has been a gap on our part.*

*Well, we are fixing that. Today, I am happy to announce the creation of a new Inuit Secretariat within Indian and Northern Affairs Canada.*

A major reason the Inuit have wanted this extra attention is that the four northern regions where they live have important entitlements through recently concluded land and sea claims settlements, ones which, as the Auditor-General has pointed out, are not yet adequately understood or acted upon by the federal bureaucracy.

The Inuit, for their part, tabled a draft partnership agreement as an effort to provide a framework for Inuit-government relations. Unlike the First Nations (i.e., Indian peoples), Inuit have no equivalent to the Indian Act, for which they have been mostly glad. However, today there are many practical reasons to organise relations better.

By providing some progress and serious processes, the Canadians in recent decades have achieved a better way forward, despite long-standing indigenous grievances and deep-seated needs, than the denial or stalemate mentality which used to rule there (Miller 2000). Movement and hope, with processes for change and high level non-indigenous commitment – these are surely the ingredients for Australia, too.

## PROPOSALS FOR WORKABLE POLICIES

- The Constitutional Centenary Conference of 1991, marking the centenary of the start of Australia's federal negotiation process, inaugurated a decade of attempted recent constitutional reform facilitated by the Constitutional Centenary Foundation (which was established for the purpose and wound up at the end of 2000). Among the dozen or so conclusions of that first conference was No. 10:
  - *The Aboriginal and Torres Strait Islander Peoples and the Australian Constitutional System*  
(1) *There should be a process of reconciliation between the Aboriginal and Torres Strait Islander peoples of Australia and the wider Australian community, aiming to achieve some agreed outcomes by the Centenary of the Constitution.*
  - (2) *This process of reconciliation should, among other things, seek to identify what rights the Aboriginal and Torres Strait Islander peoples have, and should have, as the indigenous peoples of Australia, and how best to secure those rights, including through constitutional changes.*
  - (3) *As part of the reconciliation process, the Constitution should recognize the Aboriginal and Torres Strait Islander peoples as the indigenous peoples of Australia.* (CCC 1991)
- A 1993 conference in Canberra on indigenous peoples and national constitutions<sup>26</sup> with a wide assortment of indigenous and non-indigenous notables and experts reached a useful consensus. It would be hard to find a better starting-point than that consensus which, in my words, goes like this:
  - *indigenous peoples are distinct political communities in Australia with unique needs; and*
  - *processes should be established as soon as possible for them to work out the nature and details of their constitutional place in Australia.*
- The 1994-95 work by ATSIC, the Reconciliation Council, and Human Rights & Equal Opportunity Commission's indigenous affairs ombudsman on a *social justice package* as a third item in federal response to the *Mabo* decision of the High Court in 1992, provided an internationally unique indigenous-run consultation and discussion process to develop a national indigenous policy which could expect official support. Its three reports did that,<sup>27</sup> but unfortunately the Howard government arriving a year later would not accept any indigenous policy work from the Labor era. The third of those reports, by Mick Dodson, is a brief ramble in an Australian Reconciliation landscape and remains especially useful and accessible today (HREOC 1995).
- In his Lingiari Lecture of August 1999, Patrick Dodson (older brother of Mick) gives a clear strong program of priorities, policies, and processes to develop a national approach which carries us beyond the current era of stalemate, stalling, and recrimination (Dodson 1999).
- Other important documents which are crucial expressions of indigenous thinking for national and regional consideration are the Barunga Statement of 1990, the Torres Strait's Island Coordinating Council principles and objectives of 1990, the Red Centre and Eva Valley meeting outcomes of 1993, Kalkaringi Statement of 1998, and later Batchelor convention outcomes in the same year.
- The Constitutional Conference of 1998, despite being so closely identified with Prime Minister Howard and his chosen representatives, made significant recommendations for recognition of indigenous peoples and rights.<sup>28</sup>

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<sup>26</sup> For the useful reports of that conference see *The Position of Indigenous Peoples in National Constitutions: Conference Report, June 4-5, 1993*, and *The Position of Indigenous Peoples in National Constitutions: Speeches from the Conference, June 4-5, 1993*, Council for Aboriginal Reconciliation, Canberra, and Constitutional Centenary Foundation, Melbourne, 1993.

<sup>27</sup> The three reports in order of appearance are: *Going Forward: Social Justice for the First Australians*, A Submission to the Commonwealth Government from the Council for Aboriginal Reconciliation, Canberra, 1995; *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures*, Native Title Social Justice Advisory Committee, Aboriginal and Torres Strait Islander Commission (ATSIC), Canberra, 1995; and *Indigenous Social Justice, Vol. 1, Strategies and Recommendations*, Submission to the Parliament of the Commonwealth of Australia on the Social Justice Package by Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Canberra, 1995. [Also *Vol. 2, Regional Agreements*, & *Vol. 3, Resource Materials*].

<sup>28</sup> The Communique notes that the Constitutional Convention of February 2-13 resolved that a Preamble should include among other things 'Acknowledgement of the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders' and 'Affirmation of respect for our unique land and the environment'. It adds that it was resolved that 'The following matters be considered for inclusion in the preamble: [two items with the third and last being] Recognition that Aboriginal people and Torres Strait islanders have continuing rights by virtue of their status as Australia's indigenous peoples.' Finally the Convention called for 'a further Constitutional Convention' some years after institution of a republic on whose agenda various items would be, including 'constitutional aspects of indigenous reconciliation'.

- The Statement Towards Aboriginal Reconciliation presented to the collected heads of governments and opposition from around Australia in May 2000 was damaged in advance by the Howard government's refusal to accept some of its provisions. However, together with its four strategies it offered a comprehensive program and process for continuing work and policy development.
- The Federalism Forum held in Old Parliament House, Canberra, on October 19-20, 2000, winding up a decade of constitutional explorations by all Australian governments and oppositions together with experts in the field urged in its Communiqué (2.4.3) that:
  - *There needs to be wide-ranging national debate within the framework of the reconciliation process about the representation of Australia's indigenous population. In this context, Australia should consider as one option the recognition within the structure of the Australian federation of the Aboriginal and Torres Strait Islander nations. (2.4.3)*
- Without national or other comprehensive frameworks we are apt to forget or lose – amid all the chopping and localising, among agency abolitions and focus on community needs, and the entombing of indigenous policy in management jargon which makes so many discussion documents unreadable and, perhaps, meaningless – the fact that indigenous peoples are internationally recognised and validated political communities or ethnic nations living within contemporary nation-states. They are not mere sport for experimental local programs.
- The sort of work which Australian indigenous and non-indigenous persons have already begun (as in the first several points in this list above) – that is, a search for practical institutional reforms to accommodate indigenous autonomy within shared nation-state-wide opportunity, a basic federal principle – is the 'self-determination' which is increasingly recognised by indigenous peoples and by governments and international bodies. It is a very practical guiding principle. The rejection of the *symbolic* by some non-indigenous political leaders seems a cover for the *shambolic* in Australia's indigenous affairs, cutting up the big picture into too many little pieces.
- The post-1945 era's beginnings may have been dismal for Australia, no less than for other countries. However, Canada and New Zealand could draw on old enactments and revive them, e.g., the Royal Proclamation of 1763 and the Treaty of Waitangi. Norway and its neighbours could draw on principles of recent international law to frame new national approaches, as well as their own strong public and official commitments to social justice. These approaches, like the cobbling together of doctrines by Chief Justice Marshall in America in the early 19<sup>th</sup> Century, amounted to an active moral sense recognising a need and then finding familiar means through which to address it. Less important than the *form* of policy or political reform was the recognition of its necessity. In that respect it is not always clear in today's Australia that political leaders have accepted the same need.
- The several countries mentioned all recognised the indigenous policy primacy or sole authority of national governments. That central role only offers more coherent approaches and greater distance from local interests hungry for indigenous lands and resources. National governments are more in touch with, and responsive to, international currents and standard-setting. In Australia the fragmented and shabby old state programs and structures have usually defied even reforming premiers and able ministers, and have been characterised by confused or episodic policy directions internal to this or that state's political culture or current administrative fad. Any sense that indigenous peoples are a *national* minority with *internationally* recognised and protected rights can be lost, or even unknown, at state level. Indigenous people can then seem to be mere local problems in basic service delivery.
- Another problem in Australia is the belief of many that concern for disadvantaged fellow black citizens is some sort of radical Left whimsy. This would seem to sit oddly with cults of 'mateship' and 'a fair go', or basic notions of national unity, but it is strongly felt by some. In other countries the rights and well-being of indigenous peoples have been matters of concern to Right, Centre, Liberal, and Left political stripes – even *bête noire* Republican presidents in America – with the big positive steps have been by no means limited to one or other party. Similarly, social democratic or labor governments have sometimes proven as pig-headed and resistant to indigenous aspirations as any on the Right. Indigenous needs and social justice are human issues which concern all of us.
- Since 1967 Australia's federal government has had the constitutional power to lead indigenous policy. There have been proposals advanced by non-indigenous reformers on both sides of national politics (Coalition and Labor), as well as by indigenous leaders, for a national framework. Ideas have ranged from a single national treaty, to constitutional or political statements of principle, to processes of discussion, education, and negotiation leading to some politico-legal accommodation or Reconciliation. It seems likely that sometime in

the not too distant future some framework or guidelines will be agreed, if only for reasons of practical usefulness rather than moral worth.

- A recent Australian initiative has been the collecting of documents, including treaties and agreements from North America.<sup>29</sup> While these may be useful precedents to cite in discussion, they have no inherent power. The successful native movements and reform politics in Canada, Alaska, and Northern Europe, and elsewhere have been political processes in which concerned indigenous people and their non-indigenous friends, sometimes with a nod or nudge from courts or governments or oppositions, have provided moral leadership and used what was to hand, whether a moribund treaty or forgotten law, or created new documents. The magic is not in a piece of paper but in the political process to give it meaning.
- Various types of issue offer particular possibilities. For instance, political and constitutional arrangements for Torres Strait, like the contents of a new territorial or statehood constitution for the Northern Territory, are particularly important because they take us back to the initial challenges of the White Man's encounter with the previous inhabitants. How should indigenous peoples be recognised, their economic and livelihood traditions provided for, their cultures and languages given proper status, and their right to the full opportunities of our contemporary society guaranteed, even while their traditions and social stability are maintained within their own control and set of ideals? How can we avoid the destruction of their vital eco-systems and living resources by our industrial society? In other words, how can we meet the challenges we failed or were too ignorant to meet in earlier times of white settlement – a time now called *invasion* more generally and with too much good reason! Unfortunately there are those who would learn nothing and rush the NT's future in gold rush spirit, pushing 'the natives' aside, and reliving the worst of the 19<sup>th</sup> Century. The eminent males who devised the late 19<sup>th</sup> Century political settlement which became the 1901 Australian Constitution would think poorly of their successors if they thought we had learned nothing from a century of practice and problems. No problem has been more disastrous than white-black relations. The issue of hinterland constitutions is a national issue, and, as found in other countries like Canada, the relatively fluid contexts of such regions provide a creative opportunity to devise new policies which provide inspiration and practical models for the rest of the country. (Jull 2001a; 2001b; 2003a; 2003b).

#### **PRESENT AND FUTURE**

On April 27, the SBS current affairs television program *Insight*<sup>30</sup> held a studio audience discussion, 'ATSIC – Who cares?', with indigenous representatives, an unlucky NT senator from the Government, and two or three other whites with special connection to Aboriginal issues. While the media and official debate had been carried on by whites talking loftily in or about Eurocentric notions of governance, the *Insight* people brought out the more important impact of ATSIC's abolition on its indigenous clientele and communities, and the Aboriginal views that 'mainstreaming' had already failed all over Australia, that a major voice for indigenous participation in public debate and official decision-making was being stilled, and that some appointed friends of government could be and would be no substitute. Not surprisingly there was an indigenous consensus of deep distrust of the White Man's government's ways and wiles. Geoff Clark was on the show, complete with T-shirt noting his website (<http://www.geoffclark.com.au/>), as well as Reconciliation Australia co-chairs Prof. Jackie Huggins and Fred Chaney, Senator Aden Ridgeway, Olga Havnen, Prof. Boni Robertson, and many others. The group was nicely divided between the young and the older and experienced sorts, and male and female, but all were articulate in their views. An innocent white tuning in would have discovered that indigenous Australia has many purposeful, hard-working, and determined people trying to make a better life for their peoples, a point usually lost or denied in the white argy-bargy which has passed for policy debate in recent years.

Howard has run a one-man government on indigenous policy, with ministers left to justify or carry it out. He has played on the most uninformed notions which the public (and presumably he, himself) holds, and assiduously undermines attempts at policy discussion with mournful and spurious appeals to national unity. In recent years he has taken to saying that the lack of personal opposition he encounters to his position on indigenous affairs indicates its wide acceptance. On the contrary, there is much discussion out of his range, those interested in the subject having learned that discussion with him is pointless. His viewpoint, dignified in recent work by Brett (2003) as an astute and coherent philosophy, is merely the small change of Anglo bombast, sprinkled with some harmless wartime morale-boosting, provincially prevalent in the 1940s. Howard is not the only person in his 60s who grew up with it.<sup>31</sup>

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<sup>29</sup> See especially Langton et al. 2004, and Nettheim et al. 2002.

<sup>30</sup> See transcript at <http://www.sbs.com.au/insight/content.php3?panel=1#>

<sup>31</sup> A year before Howard came to power in 1996 his former chief of staff warned that he would not understand or accept social or cultural diversity, and that his government would not be able to discuss or develop policy ideas (Henderson 1995). Indeed, his apparent unawareness of the role, workings, and purposes of the United Nations, displayed in the late 1990s *vis-à-vis* human rights issues, implies that Howard missed out on nearly 60 years of world thinking and development in political culture and society. It is not unusual for conservative parties long out of power to imagine that the world they find is a creation of their political enemies rather than the

On the other hand, while Latham's proposals to date lack a wider policy framework, and may seem to some to be shuffling the deck-chairs on the *Titanic*, they do provide for consultation and cooperation with indigenous peoples. Those peoples have good ideas for locating and reviving policy as the *Insight* program or Noel Pearson's proposals in *The Australian* ('Australia needs you', 10-4-2004), or Larissa Behrendt in *Arena* (2004), remind us. Furthermore, Labor, like most modern governing parties (other than the demagogic and populist), draws widely on the talents of members as well as expertise inside and outside government administration. There is no lack of such expertise on indigenous issues in Australia, of course, and no lack of open-minded persons on all sides of politics looking for a way forward, a real *Reconciliation* of the races. A Labor government, or a post-Howard Liberal leader, may begin a return to serious and contemporary indigenous policy. That could also mark Australia's return to the world community in human rights and treatment of minorities.

The states, for their part, could have played a more significant role in recent years than they have done, the more so as some of the premiers are informed and have good instincts on indigenous issues (e.g., Bracks in Victoria, Beattie in Queensland), or strong intellectual and moral commitment (Carr in New South Wales), or a real commitment to change things (Martin in the NT).<sup>32</sup> Law and order concerns, as well as the polled views of state residents, have often eclipsed such instincts, however. As Barns (2003) has noted, conservative authoritarianism combined with liberal commitment to health, education, and social programs, is the current fashion for all parties in state government.

The day after Howard's April policy announcement we were told that 'Howard silences Aboriginal advocates' (*Sydney Morning Herald*, 16-4-04), although the content contradicts the headline:

*'Jackie Huggins, a member of the review team [to report earlier on ATSIC to Howard], said the "essential element" of its report was that there had to be legitimate national representative leadership for indigenous people. ... "A representative panel of individuals, no matter how distinguished, can never be the voice for indigenous Australia over the long term," said Ms Huggins, who is also co-chairwoman of Reconciliation Australia.'*

The national indigenous rights ombudsman,<sup>33</sup> Bill Jonas, commented that the abolition of ATSIC:

*does not reveal a failure of representative Indigenous structures. It reveals a deep antipathy on the part of the government towards engaging with Indigenous peoples and acknowledging the legitimacy of the aspirations and goals expressed by Indigenous peoples. ... Replacing ATSIC with an appointed board of advisors will entrench this problem further, by ensuring that the government only has to talk to select Indigenous people when it chooses to and only on issues that it wishes to engage.*

And of the whole scene Cape York indigenous leader Noel Pearson said:

*The political parties must stop taking the voters' lack of interest in, or antipathy to, Aboriginal affairs as their unstated tactical starting point. Instead of the election-driven, negative attitudes to indigenous affairs and the insufficient reform suggestions presented so far, we need a positive political program.*

In the first annual Reconciliation lecture, in the Great Hall of Parliament House, May 25, founding Reconciliation Council head Patrick Dodson (2004) said, *à propos* the ATSIC demolition

*ATSIC was created by Government so as to give Indigenous people a National and Regional voice.*

*We are now in the position where this voice is to be removed, on a whim, in a fit of pique, and without any discussion, consultation or negotiation with indigenous Australians.*

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current state of play of countless forces far beyond any government's control. Howard revealed his discomfort with non-parochial, non-WASP realities when, at the last APEC summit in Bangkok, he told Australian reporters that:

One of the great advantages of this particular gathering is that it does enable a lot of useful bilateral discussion to take place, it is in many respects, and I made this point over lunch a body whose origins are entirely about the present and the future rather than the past. I think of so many of the other bodies of which Australia is a member and conferences we attend, worthy though they are all, they're rooted in some way in the disagreements of the past or in our country's history or the history of the relations of other states. This body is entirely a product of the post Cold War era, it's entirely, it's completely indiscriminate as far as ethnicity or race or political system, all that brings it together is a shared desire for greater prosperity and partnership in the Asian-Pacific region and in that way it does have a special character and it therefore has a potential over time which is worth working to bring about and to fully realise... (Prime Minister's Media Centre, 21-10-2004)

<sup>32</sup> At the time of writing, all six state and two territory heads of government are Labor party personnel. While this is in part a reaction to Howardism at national level, Howard now argues that he is needed in Canberra to counter-balance the power of Labor states!

<sup>33</sup> Formally the Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Sydney.

*And without a vision for any alternatives.*

The national election campaign has a long time to run yet. Promoting this most political of federal Budgets even before its May 11 delivery, we got this manipulative gem from 'senior government sources'. According to reporter Atkins,

*MORE than \$60 million saved from abolishing the Aboriginal and Torres Strait Islander Commission will be used to combat domestic violence in indigenous communities.*

...

*"This [money] will do much more good than paying for the political intrigue of a select group."*  
(‘ATSIC \$61 m diverted to new scheme’, Brisbane *Courier-Mail*, 8-5-04)

Right on cue *The Age*, Melbourne, doubled the amount in a breathless morning-after Budget report beginning:

*Savings from the abolition of the Aboriginal and Torres Strait Islander Commission and its administrative arm worth \$116.2 million will be spent on programs to tackle indigenous child abuse and family violence.*

(‘ATSIC funds go to families’, by Meaghan Shaw, 12-5-04)

What a good idea – we could sell the navy to an Asian power, say India or China, and then have lots of extra money for hospitals or statues of John Howard or other good works! Black on black violence is Howard’s favourite ‘dog whistle’ issue because to his supporters it makes indigenous people look bad and undermines their claims on our conscience or tax dollars, but he can pose piously to others as caring about a social evil.<sup>34</sup> Meanwhile, at the United Nations, two credible Aboriginal women<sup>35</sup> are telling the Permanent Forum on Indigenous Issues on behalf of Senator Vanstone and Howard that women’s conditions are improving tremendously at home (Vanstone press release, 11-5-04). What is remarkable about this is that at home, here, even the Howard government does not pretend such conditions are getting better; indeed, they talk endlessly about how awful indigenous female and family conditions are as a stick with which to beat Aborigines, their organisations, ATSIC, Labor, past policies, etc! No UN criticism wanted during an election campaign, it seems.

Like Macbeth wandering on the heath, lost in his own fantasies and misreading the slippery words of three sly goddesses of destiny, the witches leading him on, many in the governing class in Australia today apparently imagine that they have insight and power to define and prescribe ethno-political realities which they are too incurious, self-important, or impatient to understand. Unlike the famous play, today’s loud over-acted exercise in the banality of evil is almost unbearable to watch in the daily media. Indigenous representatives are needed to re-write the script.

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<sup>34</sup> One may doubt that sending caring experts into troubled communities will achieve much if many other hideous conditions are not also addressed, but one must hope. See ‘Cash to curb Aboriginal violence’, *The Australian*, 12-5-2004, the Murdoch press Budget story.

<sup>35</sup> That is to say, I respect both as individuals and do not think they would have accepted air fares in order to shop at Saks Fifth Avenue.

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