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AUSTRALIAN CANADIAN STUDIES

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Australian Canadian Studies (ACS) is a multidisciplinary journal of Canadian studies. It is the official journal of the Association for Canadian Studies in Australia and New Zealand (ACSANZ) and is published twice a year. ACS is a double blind refereed journal for the humanities and social sciences that welcomes Canadian and comparative

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ACSANZ is an interdisciplinary organisation which recognises and encourages interest in Canadian Studies and aims to promote greater understanding of Canada at all educational levels and in all disciplines.

Support in the form of Grants and Awards is available for teaching and research in a number of areas, particularly the social sciences and humanities, and for work of a comparative nature. To stimulate and support interest in Canadian Studies among future academics, ACSANZ also funds Postgraduate Travel Awards. ACSANZ has held nine biennial conferences.

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Foreword

It is with great satisfaction that I greet this special edition of *Australian Canadian Studies*. The journal gives further evidence of the success of the 2002 Biennial ACSANZ Conference, “Converging Futures? Canada and Australia in a New Millennium,” and provides a lasting legacy to that remarkable and fruitful gathering of scholars, journalists and government officials in Canberra in September, 2002. The Conference Committee and the ACSANZ Executive are to be congratulated for organising such a successful Conference and for publishing this set of Conference papers. Congratulations, in particular, go to the Editor, Dr Sonia Mycak.

The Conference was strongly supported by the Canadian High Commission, with two goals in mind. First, we wanted to build upon and expand the efforts of ACSANZ to encourage the study of Canada among scholars in Australia and New Zealand. Second, we wanted to strengthen the Canada-Australia relationship through the exchange of ideas and through an active and vibrant dialogue.

We are confident we achieved those two objectives. The Conference assisted ACSANZ, and by extension Canadian studies in Australia, to enhance the image of the Association and raise awareness of Canadian subjects amongst influential Australians. The Conference also strengthened the bilateral relationship by bringing together senior decision-makers, as well as academics, from both countries on a variety of priority public policy issues.

As well, the Conference included two high-profile, public dialogues. The first involved High Court Justice Michael Kirby and Canadian Supreme Court Justice Frank Iacobucci, who spoke on the subject: “A Bill of Rights: The Canadian Experience and the Australian Debate.” The second dialogue was between *Globe and Mail* columnist Jeffrey Simpson and Michelle Grattan of Melbourne’s *The Age* newspaper who addressed the subject “Citizen’s Rights, Media Ownership and the Press.” There was also a well-attended, special screening of the

renowned Canadian film “Atanarjuat: The Fast Runner” during the period of the Conference.

There was an added benefit. The Conference also served to raise the profile of Australian–Canadian relations in Canada through five articles, written by Jeffrey Simpson, that were published in the *Globe and Mail*.

I am pleased that the Canadian High Commission was able to play a part in *Indigenous Issues and the Nation*. This selection of papers, which focuses on Indigenous themes, formed one of the key strands of the Conference. It stands as testament to the vitality, richness and breadth of Canadian studies. I have no doubt that the enclosed papers will be of great interest to scholars throughout the world. I commend them to you.

Jean T. Fournier
High Commissioner for Canada

Where *is* the North?

One feature which is common to Australia and to Canada is the power of the compass. In fact, in Australia, nearly all of the cardinal compass points appear in the names of states and territories: Western Australia, South Australia, the Northern Territory. Indeed, it is only the eastern compass-point which is not immortalised in this way; instead, the rather quaintly-named New South Wales appears as the “founding state” (if not the “premier” one) on the east coast.

As an aside, few Australians bother to imagine why their home has been named as if it were a slightly renovated version of a Southern Welsh hamlet but — somewhat like Nova Scotia (New Scotland) in Canada, the resemblances are far more superficial than real.

Apart from the Northwest Territories, the historical figures who bestowed Canadian provincial titles went in for far more inventive rather than literal nomenclature — aside from Newfoundland, of course — which was something of a shorthand for the Europeans’ views of the entire continent at the time.

But what of the north? Far more than a direction, “the north” is a metonym for Canada as a whole; not simply its northernmost regions. “North of the 49th,” the “northern giant,” the “true north.” Canada has been called all of these things at various times and by various observers.

Where exactly does the north begin? At the tree-line? At the tundra line? Where muskeg takes over? North of the Arctic Circle? Of Bering Strait? Oddly enough, Canadians almost always speak about the North the way that most Australians speak about the outback: it is there, in abundance, but it is huge, unknown and, somehow, dominant. Very few Canadians have travelled to the subarctic; let alone to the polar

region itself. Similarly, even in the year 2002, which was officially the “Year of the Outback,” only a small minority of Australians travelled the Gunbarrel Highway or voyaged so far west from Birdsville in Queensland that they traversed into the Northern Territory. If 2002 was its year, then the outback needed far more than 365 days to be discovered.

And the Northern Territory itself raises as many questions as it answers. How is it that most of Central Australia (which is variously called the Dead Heart, the Red Heart and the Red Centre) is actually in the Northern Territory — while the remainder sits atop — well, yes — South Australia? Where, then, does Australia’s “north” begin? North of the tropical zone? In monsoon country? In crocodile territory?

One thing is certain: in both nations the north is as little-known as it is sparsely-settled. Every state and territory capital in Australia — save for Darwin — lies in the southern half of the continent. Only about 3% of Australia’s population of 19.7 million lives in the nearly 40% of the landmass that, in terms of area, lies in the tropics. The figures for Canada are remarkably similar. In Canada’s north, the Polar Region (which comprises the Yukon, the Northwest Territories and Nunavut) embraces 41% of the nation’s landmass but just an infinitesimal 0.3% of its total population (*Canada Yearbook*, 2001: 76). Despite this sparse population, in both cases the North is symbolically far more powerful than many densely populated regions. In fact, I maintain that it is so precisely because of this “wilderness feel.” *Ce n’est pas vise mais vitale*.

Aside from Yellowknife and the capital of Nunavut — Iqaluit — there are no other communities in Arctic Canada with more than 5,000 residents; this, in a nation of more than 31 million people — the vast majority of whom live within 200 kilometres of the US border. Meanwhile, it costs nearly as much (approximately \$2,000 Canadian) to fly from Iqaluit to Ottawa return as it does to fly from Ottawa to Canberra return — a sobering comment on the fact that it is not just distance that matters.

Why point all of this out? Because “the North” holds an incredibly powerful sway in both nations, in terms of politics, history, military and strategic matters; above all, in terms of Indigenous and national affairs. From Nanook to Nunavut. Canadians have frequently romanticised the north — defined as the high Arctic, the lands of the Midnight Sun, the treeless expanses of ice; the circumpolar world. As Peter Jull has explained:

However hypocritical, romantic, foolish or misinformed they were, ordinary Canadians had a large emotional stake in the North, its peoples and polar bears ...
Canadians allow romanticism towards the Northern territories which they deny provincial northlands (Peter Jull, “Nunavut,” *Indigenous Affairs* 3/2001).

What accounts for this “emotional stake?” (Especially since it is one which I argue is as potent in Canada as it is in Australia.) Why is the north so little defined yet so universally enlisted in the service of the peoples’ dreams? I believe that the explanations lie in three areas: the strategic, the Indigenous and the transcultural. In many ways, the first and third of these become elided, but the second is arguably the most significant form of defining reality and discourse alike.

Take Northern Australia, for example. Various known as the Top End and the “Never Never,” it has always been strategically significant. Darwin is the only major city in the Western World to have been bombed by the Japanese in World War II, and destroyed by a cyclone nearly exactly three decades later, only to become even more important militarily than ever in the twenty-first century. One has only to look at the crucial role played by Darwin and its military bases during the United Nations’ sanctioned operations to stabilise and rebuild East Timor from 1999 to the present, to appreciate its pivotal strategic position. And, as the expatriate Australian commentator Ross Terrill has aptly pointed out: “within an arc 2,000 kilometres north of Darwin there are [well over] 200 million Melanesian and Asian people, while within the same arc south there

are fewer than 20 million Australians.” (paraphrased from “The Last Frontier,” *The Australians*, 1987: 178.).

Northern Canada, too, is highly strategic territory. Nuclear-powered American submarines regularly traverse the Arctic waters while the Cold War era saw a huge investment in missile detection and defence capabilities in Northern Canada. The so-called “Son of Star Wars” initiative is almost certain to do likewise. Despite the reluctance, if not the implacable opposition of many Canadians, there is little doubt that Defence industries are one of the few “recurrent” industries in Arctic Canada which are not affected by either economic downturns or by global warming.

In all of these cases, direct impacts fall upon Indigenous peoples — those First Nations who are not only the residents of the north but who have lived there for untold generations. The “true north” is their country, and the world is beginning to acknowledge that fact.

One form of acknowledgement is this special volume — growing as it has from a uniquely bicultural conference “Converging Futures” held in Canberra in September 2002. It looks at the comparative Indigenous theme from many different perspectives — the historical, the sociological, the political. But what is special about this collection is its complete immersion in bilateral knowledge: the key to greater depths of perception, and appreciation. In the end, just finding the words for understanding the sub-tropical in Australia and the sub-arctic in Canada leads us to forms of language which are not regional or national but Indigenous and transcultural.

Adam Shoemaker
President ACSANZ

White-Out/Black-Out

If you watched the 2000 Sydney Olympics you would be aware of how white Australians were keen to promote the idea that indigenous Australians are integral to the nation's identity. The opening ceremony included Dreamtime dancers on stilts, a didgeridoo player, women flown in from traditional communities. The accompanying cultural festival featured many indigenous actors, dancers and writers, and a stunning exhibition of Aboriginal desert art.

Then, of course, there was Cathy Freeman's win in the 400m sprint — making her the first indigenous Australian to win an individual Olympic Gold medal. There was a moment of genuine national euphoria, I think, as Cathy glided through a galaxy of flashing bulbs, performing her victory lap in red, black and yellow shoes — the colours of the Aboriginal flag.

During the Olympics, Australia presented itself as a racially inclusive and harmonious society; as reserving a special place in national life for Aboriginal and Torres Strait Islander peoples.

Yet even as Cathy Freeman lit the Olympic flame, the parallel reality was that the average indigenous man in this country does not live long enough to collect an old age pension; that the life expectancy of some indigenous women actually fell during the 1990s; that an average life expectancy gap of 20 years still separates the non-indigenous and indigenous Australians.

Despite substantially increased levels of government funding, this gap has not improved in 20 years. In this, Australia has a *worse* record than any other wealthy nation with a dispossessed indigenous minority.

For instance, official Canadian statistics show that in 1996, life expectancy for Registered Indian men (at 68.2 years) was 7.5 years behind that of the total Canadian male population (75.7 years.) Life expectancy for Registered Indian women was 75.9 years, 5.6 years less than the average life span for all Canadian women (81.5 years). More optimistically, the Canadian figures, supplied by the Department of Indian Affairs and National Development, also show that between 1991 and 1996, the life expectancies of Registered Indian men and women improved at a significantly faster rate than those of the wider population.¹ In Australia, the opposite is true: the health of the general population has been improving at a faster rate than that of the indigenous population. In other words, in Australia, the story of indigenous life expectancy in an era supposedly more racially enlightened than any that preceded it, is (uniquely) one of stagnation and slippage.

Think back to the Sydney Olympics, and you might assume that a country that wants to be seen as racially inclusive, as egalitarian, would want to interrogate this failure; would treat it as the scandal that it is.

You'd be wrong.

Instead, the response to those stalled life expectancy figures is a kind of dull resignation; a numbed acceptance. Indeed, after I highlighted them in my book *White Out*, one radio interviewer suggested that this was wrong; that it would only encourage indigenous people to blame themselves for their own premature deaths. On the contrary, I argued, these figures have yet to be treated as the social emergency, as the extraordinary failure that they represent.

The Federal Government says the 20-year life span gap is unacceptable. This did not stop it turning the Indigenous Affairs portfolio into a part-time job, held by a minister preoccupied with making political capital out of asylum-seekers.

During the 2001 federal election campaign, the Labor Opposition's then-Indigenous Affairs spokesman, Bob McMullan, declared that

“indigenous injustice, disadvantage and reconciliation are the greatest social justice issues of our generation.” I could not agree more. Yet during that campaign, Labor devoted far more energy to its planned tax rollback on coffins and tampons than it did to indigenous issues.² Such blatant political opportunism encapsulates how a focus on intentions over outcomes; rhetoric over results, has fostered a culture of systematic underachievement in indigenous affairs in Australia.

Part of the problem is that Australia’s indigenous people — like Canada’s — comprise only 2 to 3 percent of the population. In Australia, Aboriginal and Torres Strait Islander people lack the force of numbers to vote a government out of power when it lets them down. Therefore, the price for political failure in this area remains low. This occurs against a backdrop where federal parliament — by design or default — has acted as a kind of exclusion zone when it comes to indigenous representation. Indeed, in 102 years of nationhood, the House of Representatives has not accommodated a single indigenous MP; only two indigenous senators have been elected to the Senate.

If Australia is to evolve into a truly inclusive nation, this must change — perhaps by including dedicated indigenous seats in both Houses of Parliament. This would not be the radical departure it might seem to some; after all, the Senate already permits a kind of affirmative action, whereby the less populous Australian States enjoy a greater number of senators than their population share strictly entitles them to.

In Australia and Canada, indigenous issues are often highly contested. A nation that is moving towards political maturity conducts mature public debates, and acknowledges that seemingly intractable problems have complex causes. Instead, the indigenous affairs agenda in Australia is deformed by an extraordinary degree of partisanship and censorship.

While the Right looks to a discredited past — the assimilation era — for solutions, the Left blames unrelieved or even deepening indigenous social and economic problems *entirely* on racism and on a

history of white oppression. In this climate, attempts at constructive criticism of contemporary policies are dismissed as either attacks on indigenous people themselves, or, a reason to abolish self-determination or (as the conservatives prefer) self-management altogether.

In attempting to write a book that was critical of orthodox Left and Right positions — a demarcation that still strongly applies in indigenous affairs — some people were wary, not just of my version of the facts, but of my right to state them at all. One publisher liked my ideas, but said she would only print them if I was Aboriginal.

When an extract from my book, *White Out*, focusing on the indigenous life expectancy crisis, appeared in a national newspaper recently, I received many emails — one from a former insider from the far-right One Nation Party. He assumed I would automatically agree that the answer lay in assimilation. Yet my book accuses neo-assimilationists of romanticising the past just as they accuse supporters of self-determination of romanticising the present. Among their sins of omission: failing to mention how, in the latter stages of the assimilation era — the mid-1960s — 10 in 100 Aboriginal babies died before their first birthday.

At the other extreme, in a left-of-centre newspaper, an academic reviewer implied that *White Out* blamed Aboriginal people for their own predicament. While I strongly support rights and responsibilities agenda of the outspoken Aboriginal leader Noel Pearson, there are examples of gross government neglect and duplicity in every chapter. The same reviewer also took me to task for failing to *prove* my assumption that welfare dependence harms Aboriginal communities.

He was asking me to prove empirically what has been shown to be true for any other group in society: that long-term welfare dependence, that chronic lack of employment, is a bad thing. The academic even cited Noel Pearson to support his own theories that welfare did not necessarily damage indigenous communities. Could that be the same Noel Pearson who, in 1999, kick-started a national

debate about how welfare dependence was “poisoning” his people?
The same Pearson who is quoted extensively in my book?

White Out has had a lot of positive media attention. Even so, some of the coverage merely reinforced what the book attacks: the partisan posturing, the fear of being seen as racist, that precludes open debate.

If Australia’s record in indigenous affairs is to reflect the international image it likes to project, we need to come out from behind the ideological barricades, and answer these questions:

a.) Why is that over the past three decades, billions of dollars in government spending and more progressive attitudes have had so little positive impact on the majority of indigenous lives? (I am not saying that too much is being spent; rather, that money has often been spent to disappointing effect. For instance, in 1968–1969 annual Commonwealth outlays on Aboriginal affairs were a paltry \$16 million. Now they total more than \$2 billion — yet as we have seen, that 20-year life span gap has not improved in 20 years.)

b.) Why is it that state and territory governments spent \$400 million implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody — only to see the number of black prison deaths skyrocket?

c.) Like Canada, Australia has its indigenous “stolen generations.” *Bringing Them Home*, the 1997 report that grew out of the stolen generations inquiry, equated the past, forced removal of indigenous children with genocide. Yet in the three years after the stolen generations report was released, the number of indigenous children removed from their parents soared.

d.) How is it that in the Northern Territory, many Aboriginal children were leaving school during the late 1990s with the literacy skills of six and seven year olds? Why have employers in the Territory reported that *more than ever*, they are unable to find Aboriginal employees who can satisfy basic English literacy requirements, such as reading health and safety signs on work sites?³

In 2002, Australia marked 30 years since the boldly-reforming Whitlam Government adopted self-determination in indigenous affairs. It would be misleading to pretend that important gains have not been made since then.

At the end of the assimilation era, there were only a handful of indigenous students in tertiary education. Today, according to figures from the federal Education Department, there are about 8,000. Today, 15 to 16 per cent of the Australian land mass is Aboriginal-owned; indigenous visual art is keenly sought after and admired internationally. Many indigenous people have excelled in professional sports and the arts. Thousands of indigenous-controlled, publicly funded organisations run everything from playgroups to community radio and health services to a sprawling bureaucracy in Canberra with a \$1 billion annual budget.

All this points to the rise of a highly talented and visible indigenous middle class within a relatively short space of time. But those life expectancy figures suggest that the drop from that middle class to the indigenous underclass is precipitous. Given this, what we desperately need is a forthright but fair debate about why many white and black institutions are failing in their attempts to improve the majority of indigenous lives. What we have is a debate in which observing taboos or maintaining strategic silences is more important than exposing complex truths.

While supporters of the stolen generations talk of a holocaust, opponents talk cruelly of “rescued” children, or deny the very existence of the stolen generations. Historians are crassly classified as belonging to the “black armband” or “white blindfold” schools. We have a Prime Minister who has referred to past atrocities against indigenous men, women and children as “blemishes.”

It’s also true that many progressives have found it easier to attack past misdeeds than confront contemporary mistakes. Yet these mistakes may prove just as devastating as those made during the past. Pearson, for instance, has warned that some contemporary policies are so misguided, they may turn out to be “genocidal.”

In this violently polarised climate, familiar archetypes have often been treated as more truthful than the realities that underlie them. In the wake of the Royal Commission into Aboriginal Deaths in Custody, it has been widely assumed that imprisonment is the leading cause of indigenous suicide. The suicide rate of indigenous people is — tragically — the highest in the nation, and is rising. But the reality is, indigenous people are far more likely to commit suicide out of jail than in — I know of people who have been attacked for even stating that fact publicly. Because of the widespread misperception about the causes of indigenous suicide, non-custody suicides have often been denied the resources, public attention and political concern that suicides in custody have attracted — even when they have reached epidemic levels in certain communities.

This is not to downplay the gravity of suicides that occur in custody. Nor is this to deny the dimensions of the indigenous custody crisis, or the hypocrisy of governments which have contributed to it. For at the same time state and territory governments claimed to be taking the royal commission seriously, they introduced law and order drives which put more blacks behind bars. Indeed, since the royal commission urged in 1991 that jailing indigenous offenders be a punishment of last resort, Australia's indigenous prison population has more than doubled.

This is not just a reflection of cynical law and order auctions. It also points to a massive failure to arrest social and economic disadvantage and alienation in indigenous communities — and to the rise of anti-social behaviours that often go with that.

As a journalist, it has been put to me that reporting such behaviour is not right, because it entrenches negative stereotypes. I admit, this is a risk, but the risks of covering up such problems are greater. For when a problem is denied the oxygen of public debate this often translates into a lack of political pressure to do anything about it. For instance, when I first reported on indigenous family violence in the mid-1990s, a code of silence was operating. This code meant that those indigenous women who were taking risks in speaking out were

often getting nowhere. Federal and state politicians, even feminists, were ignoring the problem, while the peak indigenous affairs body, the Aboriginal and Torres Strait Islander Commission, was spending just \$1.3 million out of a budget of \$900 million on an issue it called “our big shame.” Around this time, I know of one indigenous woman who called on black legal services to do more for battered indigenous women at a community gathering. Every man — except her father — left the room in protest.

Many people comfort themselves with the idea that the worst health, unemployment and violence problems are confined to remote communities. I would ask them to think about this. I was chatting to an indigenous playwright recently about the Koori football team he had played for in Melbourne years ago. There were 22 players in that team. Ten are dead, though they would still be in their thirties or early forties, had they lived. This playwright still works with inner city Koori youth. Their role model, he says, is not Cathy Freeman — heroine of the 2000 Olympics — but “10-second Jimmy,” the fastest car thief on the block.

Notes

¹ Minister of Indian Affairs and Northern Development. “Comparison of social conditions, 1991 and 1996, Registered Indians, Registered Indians Living on Reserve and the Total Population of Canada.” Ottawa: Department of Indian Affairs and National Development, 2000: 1-10.

² Neill, Rosemary. “No room for Aborigines in a pork-barrel vision.” *The Australian* 9 November 2001: 13.

³ Collins, Bob. *Learning Lessons: An Independent Review of Indigenous Education in the Northern Territory*. Darwin: Northern Territory Department of Education, 1999.

The Theoretical Implications of a National Identity for Canadian Indigenous Peoples

I have written on both political theory and aboriginal peoples, but I have not taken a comparative approach. Political theory tends to be nationally specific when it considers indigenes. Even comparisons between countries that are as similar to each other as Australia and Canada produces few insights into citizenship or into the functioning of rights or liberties. There are just too many differences in the political cultures for such an approach to be useful. For example, Canada possesses a Bill of Rights while Australia does not. This means that only in the former state can one easily find a formal definition of citizens and clearly specify their rights. While this juridical distinction is unlikely to impact upon the daily lives of their respective citizenries, it does affect how politicians and commentators react to topics such as freedom and security.

In addition to the differences which arise from the presence or absence of a Bill of Rights, there are several other important ways in which Australia and Canada have taken separate paths. For instance, the debate over whether or not to proclaim a republic is much louder in Australia. Further, Canadians are much less likely to respond well to American constitutional precedents or to see democratic participation as the chief normative constraint upon government action. This, in turn, means that Australian constitutional reformers are more likely than Canadian ones to imagine a future republican state inhabited by rights-bearing citizens. The latter would see such an outcome as the undermining of multicultural values through the importation of unhealthy individualistic libertarian attitudes from America.

If Canadian political theory discussions become significant “downunder” it is likely to be more in the way of a contrast than a comparison. Australians should consider “the dominion of the north” as an example of how an English-speaking federal state with a similar legal tradition can develop quite separate political values. Australians should pay particular regard to the ways in which the rights of indigenous peoples are constrained by theories of a national culture. Generations of Canadians have discussed whether their nation has an identity and, if this exists, how it can be protected. Aboriginal peoples are both a symbol of this identity and a threat to it. In struggling to deal with this dilemma Canadian political theorists provide illustrations of pitfalls which an Australian culture might be able to avoid. The presence of aboriginal peoples within a nation-state provides a more stringent theoretical challenge than those posed by other fragments of the ethnic mosaic. Since the former are elevated as national symbols they have an importance far beyond their demographic weight. Unless their interests and views can be accommodated within the national identity there is little hope for other cultural minorities.

Canadian political theorists are not a corporate or ideological grouping, but – because many of them have been grappling with the issues of how to create national political culture – they possess certain family resemblances. The more prominent of the theorists, Will Kymlicka, Jim Tully and Charles Taylor, also hold considerable international reputations as spokesmen for identity politics and minority rights. When these writers transform basic political theory into the recognition of Canadian cultural differences this has some universal currency. The words of Jim Tully – currently the Professor of Political Science at the University of Victoria in British Columbia – are heard everywhere. His claim is that citizens cannot identify with, or give allegiance to, the Canadian federation until their cultural differences are recognised and affirmed in the constitution, and in the legal and political structures of Canada (*Political Studies* 1994, 7). Tully believes that this is not happening. Instead, there is a glacial movement towards disunity and separation in Canada. This is

caused by a failure to recognise and to accommodate the aspirations of Quebec, and of First Nations as well as of other cultural groups (91). This warning is not just to Canadians, but to inhabitants of all nation states.

The prominence given to Quebec and to non-indigenous groups in Canadian constitutional debate had caused indigenous identity to be subsumed under a perpetual Canadian constitutional crisis which has loomed ever larger since the debate over the 1982 Charter of Rights. However, this national context should not occupy all the channels of discourse; indigenous people have a theoretical standing which is separate from other ethnicity issues. First Nations should be considered separately from the imperatives of defending the Canadian identity. In the article that follows I will attempt to focus on the theoretical claims made about First Nations without concerning myself too much with the identity of Quebecers, English Canadians or of the other fragments of the ethnic mosaic. Since theoretical literature of identity politics is usually expressed either as a rights discourse or as a plea for greater participation in politics, I will discuss it under these headings.

I believe that Canadian theoretical discourse has become clouded or occluded, and that when applied to a specific kind of identity – the indigenous kind – it produces few defensible ethical results. The conceptual apparatus of political theory seems to have been pressed into the service as a tool for building a personal identity for a nation when, perhaps, nations should remain impersonal.¹ I am suggesting that the identities of indigenous peoples should not be reconciled into a national one, and perhaps that Canadians should ensure that their institutional frameworks are not conflated with national identity. The argument here is that the state should not reflect the fragmented images of its majority and minority peoples as if they were a single identity, but remain neutral on the subject. It is also suggested that political philosophers and legal theorists become suspect when they engage in nation building. They should not be allowed to surrender

their academic independence or to continue using their conceptual tools when these have become contaminated with political bias.

Theorists who rely on the remnants of liberalism to dabble in identity politics are particularly troubling. Liberalism has its uses – particularly when it blurs the edges of cruder forms of equity – but it is a cumbersome device when it is used in areas such as the defence of collective rights against individual ones. There are several arguments one could cite as to why liberalism does not invariably produce innovative ways of thinking about ethnic politics, but here I will restrict myself to two of these. First, liberalism came into existence as an ideology designed to attack privileges of a type which resemble collective rights, and, therefore, is still difficult to reconcile with those. Second, liberalism says little about the nature of the state, yet it is upon this institution that we rely to protect and enhance the quality of life of citizens.

For these reasons I will analyse Canadian political theory – when it speaks of rights and participation – without placing it under a liberal umbrella. In any case, from my survey of recent Canadian political theory, it would seem that it is unnecessary to discuss liberalism. Often the way in which rights and participation has been used by Canadian writers does not draw upon liberal theory in any essential way, and a detailed discussion of that doctrine is not, therefore, valuable.² Even Oxford-trained political philosophers whom one would usually associate with liberalism abandon this in favour of nationalism when they undertake to the serious business of rescuing Canada from conceptual confusion. For example, Will Kymlicka's statements in his book of constitutional advice, *Finding Our Way* (1998), are illiberal, but not in the way they used to be. He had earlier tried to re-focus liberalism to protect cultures rather than individuals. However, these early attempts treated aboriginal minorities as if they possessed the same standing as non-aboriginal minorities, and was quite seriously punished (Danley 169, 182). No such criticism would be levelled at him now because, in attempting to reach an accommodation between Quebec's nationalist aspirations and a "multinational federalism," he

has taken up an extreme stance which distinguishes sharply between the normative importance which he gives to “national communities” in comparison with other ethnic groups.

Ordinary attempts at national salvation are rejected by Kymlicka: he is sceptical about claims by his fellow countrymen that Canada can be rescued by increasing the amount of shared political language or of common political values. Instead, he believes the future lies with a form of federalism which will be held suspended over national groups. Three of these groups — the English, the French and Aboriginal peoples — seem to him to have priority as founding peoples. Such a suggestion seems startling and almost non-ethical because many philosophers emphasise the liberal tenets of individual choice and consent. However, with Kymlicka the right for self-government seems to be reserved for groups who have lived in Canada at least since the eighteenth century (1998, 115),³ but not those who came afterwards. That is, Québécois, Anglo-Saxons and indigenous peoples are given the right to govern themselves, but, for example, not groups such as Icelanders, Chinese, and Ukrainians whose ancestors have lived in Western Canada since the nineteenth century. This is an unintended consequence of Kymlicka’s emphasis upon current migration politics. He disregards various well-entrenched ethnic groups because his concern is not with old migrants, but with new ones. He is keen that recent immigrants to Quebec recognise that French is the language of public life in that province. Further, he is sympathetic to the suggestion that English Canadians be encouraged to conduct themselves in a nationalist way which parallels that of the French. That is, the former should construct a linguistically-based nation with which to balance the political aspirations of French Canada.

The suggestion that large national groups should engage in nation-building by forcing new migrants to surrender their own languages is rooted in the ideas of Herder and other nineteenth-century European nationalists. This is the ideal of the organic and natural community. Such an ideal has few of the moral qualities which one would expect to see in the writings of a philosopher currently

engaged in constitutional speculation. In particular, Kymlicka's advocacy of the primacy of large groups leaves little space for the cultural independence of less dominant groups even though one imagines that they also value their identities. He does not intend to harm indigenous peoples – on the contrary he explicitly attempts to safeguard their rights to be self-governing – but he narrows their options by not reinforcing rights language in general (few indigenous peoples would actually benefit from his suggestions⁴). As a consequence he leaves little constitutional space for First Nations.⁵ These peoples are the bellwethers for other ethnic groups. They seem to be the most deserving, but if their normative claims can be easily set aside then there is little hope that others will be considered.

It is not that Canadian political theorists are badly disposed towards indigenous or other ethnic groups. On the contrary, they show every sign of sympathy with these. It is just that their good intentions cannot survive the theoretical strategies they have adopted. Kymlicka is representative of the process which has affected other Canadian political theorists. In his juggling with identity politics, he has lost sight of those normative standards which are familiar to his colleagues who live outside the peculiar Canadian environment of contested nationalities. Nor is he unique in being entangled in a thicket of identity claims. He is simply the most prolific of Canadian political theorists. Canadian political theory has become odd and eccentric. Perhaps the burden of renegotiating Canadian identity is too heavy for scholars who have exclusively worked inside a formal and quasi-philosophical discourse.

One of the chief sources of identity politics in Canada is the work of Charles Taylor.⁶ It was Taylor who attempted to modify liberal democracy to make it fit Canadian needs. In the course of this adaptation he restricted the use of rights because he distrusted the support they gave to extreme individualist claims. Essentially Taylor's mode of operation was to reconcile identity politics with the democratic state by diminishing the role of equity, and by invoking a form of participation which had its roots in classical political

philosophy. This form of participation stressed that citizens had a duty to maintain the state. Taylor added a novelty to the theory by suggesting that both citizens and ethnic groups acquired their identity in opposition to others, and that this identity was an autonomous condition which needed to be protected and nurtured by the state. This form of participatory politics owes little to the way in which actual liberal democratic politics have developed in the last two centuries, but, instead is rooted in an interpretation of Hegel's *Philosophy of Right*. The substitution of this theory for conventional reality allowed Taylor to address himself to a modern polity or state which he sees as composed of legitimate ethnic groups as well as of individuals.

Taylor's critique of conventional politics involved a wide-ranging historical overview of the way in which basic concepts have evolved, but, in essence, his position was that modern politics in general (and Canadian politics in particular) have developed in such a way that the functions of government have become more bureaucratically rigid, and more distant from the citizenry (1993, 89).⁷ He believed that this was a regrettable outcome, because, without a large amount of participation a society cannot be stable, and the people will be in a condition of tutelage (1993, 90). His procedure is like a teleological analysis which examines the functioning of a political society in terms of the goals which citizens seek when protecting their dignity. Thus, in a rights-bearing society, such as the United States, the dignity of a free individual resides in his or her ability to secure rights – even against the will of the majority (94). If this philosophical stance is adopted in another country, such as Canada, it will restructure its politics so they will reflect the demand for rights. To avoid this outcome, Taylor offers a vision of a participatory society where citizens' dignity, and their freedom, depend upon their having a voice in deciding the common laws by which they and other members live.

This naturally presupposes that the institutions and practices by which the whole corpus of common laws are established, as well as the corpus itself, enjoy a profound

respect in the society, so that our identity is defined in relation to them and dignity is conferred by taking part in them. Special importance attaches to the fact that we as a whole, or a community, decide about ourselves as a whole community (Taylor 1993).

The significant features of Taylor's re-structured participatory society are that they emphasise the connection of freedom with dignity rather than with rights, and that they insist that the whole community takes its identity from its law-making capacity.

Taylor's rejection of a rights-based society has deep roots in his own cultural experience. When he refers to "solitudes" in the title of one of his recent works he is invoking the title of a classic Canadian novel, Hugh McLellan's *Two Solitudes*, in which the French and English fail to understand each other. The only link between the two communities was the aging and isolated French Canadian politician, Tallard, but, since he is a committed rationalist who is secretly devoted to the memory of Voltaire, he was cut off from the religiosity and nationalism of his countrymen. Taylor's empathetic title *Reconciling the Solitudes* seems designed to avoid the futile hopes of rationalism by appealing directly to the cultural identity of the *patrie*.

Though one can sympathise with Taylor's desire to preserve an idealised corporate life from careless and debilitating appeals to rights, his strategy seems flawed. The type of participation to which he gestures is an unattractive one to a modern audience. While he can appeal to an ancient pedigree of Greek and Roman republicanism for his support, it is unclear why he thinks that this tradition underpins the modern sense of national identity. As Walter Benn Michaels has observed about modern America, identity is now disconnected from citizenship – from the rights and obligations conferred upon the subject by his or her legal status as a citizen (1995, 15). In Canada, too, it would be extremely antique to agree with Taylor that a common identity or common life must be constantly nourished by citizens participating in formal activities such as voting and petitioning (1993, 97).

Taylor, with the assistance of Tully and others, softens his demands that participation involve the whole community when he discusses the politics of difference (roughly defined as the conflicting politics of ethnic identity). His statements about difference politics can be seen as an exception to his general stance that freedom and dignity flow from the practice of taking part in enacting laws for the whole community.

So members of aboriginal bands will get certain rights and powers not enjoyed by other Canadians, if the demands for native self-government are finally agreed on, and certain minorities will get the right to exclude others in order to preserve their cultural integrity, and so on (1972, 39-40).

The exception for aboriginal bands raises difficulties for Taylor's notion of identity. His politics of difference relies on the potential that each individual and each culture has in forming and defining their own identities (42), but this leaves him without any way of invoking identity as a value in case of disagreement between an individual and a culture. His theory of identity will fall to the same criticism which renders rights useless if individuals and collectives both make the same claim about them: That is, disagreement would immediately lead to incommensurability.⁸ This is not to argue that institutions such as courts should, or should not, balance between "incommensurable" principles; it is merely to observe that Taylor's identity politics does not anchor political principles in such a way that individuals will see their interests as represented in the culture of a community.

Jim Tully's exposition of the politics of difference does not depend upon Taylor's commitment to a shared identity in which citizens celebrate their mutual recognition of each other by the making of laws. Indeed, Tully finds it curious that a modern nation-state would pretend to have a shared identity (1995, 45). In his view, while a nation-state possesses unity and power, these attributes should not be used to impose cultural uniformity (198). This criticism is not

the minor disagreement with Taylor which Tully believes it to be. Instead, it signals to a major rift because, while they share a common focus upon identity as the basis of politics, they interpret this in very different ways. Tully's notion of cultural identity has little in common with the classical republican motifs admired by Taylor. Instead, Tully takes his idea of culture from the work of James Clifford who sees this as an overlapping, open and negotiated condition (46).⁹ However, rather than this being a fashionable extension of Taylor's views, it is disjunctive shift into the descriptive and quasi-scientific discourse of recent cultural anthropology. While Taylor viewed cultural identities as accompanied by an institutional mechanism which would cause them to recognise each other, Clifford's views were simple products of a critical anthropology which offered no promise of constitutional interaction. It is also important to note while Clifford seemed to advocate a universal discourse of culture, the strand of ethnic identity which most attracted his attention was extremely parochial. For Clifford the typical story of cultural identity is about one of the Algonquin people of New England, the Wampanoags. In brief, the moral of his narrative is that all cultures are masks which conceal a composite and self-chosen collection of social features. However, this observation is of dubious political value in Canada where the identity of indigenous peoples is usually more than ethnic nominalism. That is, Clifford's notion of culture is not relevant to the cultural politics of indigenous Canadians.¹⁰

Clifford's story is an American one which began with his puzzlement that the descendants of the Wampanoags who appeared in the Boston Federal Court in 1977 were required to prove their identity. This request was phrased in such a way that, in order to answer it, they had to prove a continuous tribal existence since the seventeenth century (7-8). Since the people in question were descended from a tiny Christian tribal remnant who had survived a brutal racial war in the late seventeenth century, and since their spoken language had long vanished, Clifford was led to conclude that their knowledge of their culture was blurred, and "overlapped" with that of white New Englanders. This is a reasonable assessment: even by the mid-

nineteenth century the inhabitants of Boston only knew of the Wampanoags because of the portrayal of “King Philip,” a seventeenth-century Indian leader, by a white actor.¹¹ However, the Wampanoags are an extreme case even in the United States, a country whose policies towards Indians were usually strongly integrationist. This example is not relevant to Canada where segregationist policies and low population densities allowed for the preservation of indigenous historical identities and languages. While the cultures of Canadian indigenous peoples were heavily modified by commercial, missionary and governmental contact, they still would find it easy to give an affirmative answer to Clifford’s question as to whether they were something more than a collection of individuals with varying degrees of Native American ancestry.

Even if we accept Clifford’s view of culture as universal, and decide that all cultures are overlapping, open and negotiated, then why should we consider them as political in the conventional sense of that word? Are we obliged to obey a culture as if it possesses authority? If cultures overlap and are open, what institution would have the authority to coerce others into obedience? The fact that these sorts of questions seem meaningless suggests that Tully was mistaken to co-opt an anthropological definition of culture into his constitutional theory.¹² Or, alternately, his attempt to add a constitutional dimension to Clifford’s notion of culture relies upon a belief that a desirable form of political participation occurs if culturally dissimilar peoples exchange stories or narratives. Participation is thus defined as learning to appreciate the differences between cultures. Tully imagines that this process is a matter of uttering speech acts of the following kind: “let me see if I understand what you said” and “is what you said analogous to this example in my culture” (1995, 133). He believes that this process will allow disparate groups to reach accommodation or to become reconciled in a way which would not be possible for principled people who were not engaged in such a dialogue (134). The former groups would understand claims and reach accommodation, while the latter would misunderstand, and view other cultural groups as opponents. There is no reason, however, to accept Tully’s statement

as a normative one; it is a faulty empirical statement. People who negotiate are as likely to acquire suspicion and hostility towards their interlocutor as they are to acquire sympathy and understanding. In the psychological literature on conflict and negotiation the latter outcome is called “autistic hostility.”

Tully’s views on political negotiation rest upon an analogy with individuals attempting to achieve self-recognition in their struggles with other individuals. He explicitly attributes this idea to Hegel (1994, 183).¹³ However, this analogy is flawed for two reasons. First, it is not clear that Hegel intended his comments upon self-recognition to be used in constitutional debates. Indeed, since his own extensive constitutional writings on England were unaccompanied by such analysis, it is reasonable to assume that he does not provide authority for this. Second, modern conflict literature does not provide backing for Tully’s idea that a “Hegelian” negotiated constitutionalism would lead to moral outcomes. That is, while it seems to be true that negotiation is more successful when no parties use threats while bargaining, it is also successful when only one party (rather than both parties) uses threats.¹⁴ The success of negotiation may, or may not, result from moral behaviour such as refusal to engage in threats or insistence upon equity.

When Tully refers to “overlapping forms of self-government,” he cites Taylor’s *Reconciling the Solitudes* (1994b, 78) as if he agrees with that work’s appeal for a state-centred identity. However, I suggest that it would be a more generous act of homage if Tully refrained from mentioning Taylor’s name, and abandoned the politics of identity. While his argument for identity politics is based on a clearly stated premise, it does not produce a cogent basis for his two consequential suggestions that the nation state will be preserved if it follows his constitutional analysis. Tully’s premise is that Canadian citizens cannot identify with their government unless their cultural differences are recognised. His first suggestion is that there should be a revision of the vocabulary and institutions of political identity which are associated with the modern nation-state (79). Tully then reaches

beyond this to make a second suggestion that the recognition of diverse strands of identity in Canada will prevent the disunity and the disintegration of the nation-state (91). At this point he is on weak ground. His adoption of a modern anthropological definition of culture with which to replace Taylor's notion of the state as the centre of culture diminishes the rationale for the politics of recognition. That is, if there is no shared political identity then how can the diverse strands of Tully's culture recognise each other, and why would they do this? What had been explicit as a psychological mechanism in *Reconciling the Solitudes* no longer functions. Taylor's theory of political identity was a conventional one with Hegelian connotations which reinforced an idea that one's own individual identity was a response to the recognition of others. By analogy, individuals also were supposed to recognise themselves in the state. While this explanation of identity is archaic, it provides *an* explanation of why people could recognise a common constitutional idea — the state. However, when Tully asks the question, "Why is the first step of mutual recognition so difficult?" (1995, 198)¹⁵ there is no answer — only an unconvincing reference to diverse ideologies which were constructed to exclude others. While Tully remains an advocate of participation, there is no reason why a member of an indigenous minority should agree with him. Tully's speech acts might end in hostility. Further, while the word "participation" might have pleasant connotations to a liberal democrat, it is unlikely to be attractive to an indigenous citizen whose very identity can be altered by the state, and whose collective persona might be too demographically insignificant to exert electoral power.¹⁶

Canadian political discourse does not serve the interests of aboriginal peoples. The identity upon which their rights are based is an objective category assigned by courts which assesses linguistic and anthropological evidence before determining the degree of autonomy, the shape of local administration and the nature of rights. The last of these, rights, seems especially fluid and can direct indigenous peoples to focus alternately upon a progressive future or a traditional one without reference to their welfare and their wishes. Like rights language, participation also threatens the identity of aboriginal

peoples. It means either participation in the state to which they are hostile, or ethnic membership in one of a variety of overlapping cultures which means that they are likely to lose their unique standing.

Given the lack of clarity in the current Canadian discussions of rights and participation it could be prudent to step back from the literature and ask how rights and participation function. On the first of these, one should ask how many rights there are and how will participation benefit aboriginal peoples. Given that one cannot enumerate or specify indigenous rights, then the only general principle which might apply is that rights are correlative to duties assigned to other individuals and groups. This, of course, is difficult to accept because indigenous political activity is not part of a balanced world where duties and rights are reciprocated. The rights referred to by indigenous peoples are usually associated with claims to autonomy and self-government and, thus, not based on claims against other citizens. Participation also fails. There are two reasons for this. First, it relies on democratic theory which indigenous people, as a permanent minority, can scarcely be expected to incorporate as part of their identity. Second, in Taylor's form, participation would mean adherence to the state as a meta-ethnic identity. This, however, would run into the difficulty that First Nations have often forged their cultures as opponents of governments not as participants in it. To put the matter in Taylor's Hegelian language, indigenous people may recognise that their own identity was absorbed by the state, but in the future they may perceive the state only as the "other."

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Notes

¹ In making this comment I am extending a suggestion by Amy Gutmann (1992, 4-5) when she suggests that Charles Taylor and others are mistaken to ascribe an identity to the state. I take her suggestion to mean that we should not think of the state as a unifying focus of group identity after the fashion of a national sport such as baseball or soccer.

² Exceptions to the statement are Darlene M. Johnston (she offers a liberal defence of indigenous group rights in "Native Rights as Collective Rights: A Question of Group Self-Preservation," 1995)

and Will Kymlicka (1989, esp. 142-157). In this early work Kymlicka acts as a philosophical minority attempting to persuade his fellow Canadians that indigenous peoples would benefit from the application of liberalism. More recently his position has become more attenuated and closer to the views of his former opponents.

³ When Kymlicka discusses the merits of group-based representation he focuses upon the fact that only Aboriginal peoples and the Quebecois were self-governing nations prior to incorporation. Since the English were doing the incorporation, it follows that there are three founding groups.

⁴ One of Kymlicka's sympathizers, Michael Murphy, thinks that the Inuit in Nunavut, various Yukon First Nations and the Nisga'a in British Columbia would form "national communities" but not other indigenous peoples (114). (The test for a "national community" seems to be a territorial one where a group was contiguous in settlement and of the same ethnicity. However, since such a test might also include descendants of immigrants it might be insufficient. Further, as Danley originally observed in reply to Kymlicka it might lead to "Balkanisation" not to a unified set of national communities.

⁵ Will Kymlicka's political speculations are not restricted to the Canadian constitution, nor does he attempt to be consistent on the role of indigenous peoples within modern nation states. In his most recent book *Politics in the Vernacular, Nationalism, Multiculturalism and Citizenship*, Kymlicka is both tentative and pragmatic on this subject (128-9).

⁶ There are, of course, other important Canadian voices on the politics of cultural identity. For example, Alan Cairns (59) advocates the nurturing of cultural identity as a necessary symbolism needed to flesh out theoretical citizenship.

⁷ Alan Cairns (116-7) could be seen as taking the opposite stance to Taylor. Cairns argues that the Charter of Rights eroded the leadership of executive federalism in formal constitutional change. It also meant that aboriginal groups no longer see themselves as supplicants.

Both these changes could be construed as ones which increased participation.

⁸ When Eisenberg raised this difficulty with the rights language in Canadian jurisprudence this was done in conformity with Taylor's criticism of rights. Presumably Eisenberg did not notice that a similar difficulty resides in Taylor's notion of identity.

⁹ Tully also finds sources for his "overlapping" cultures in the work of Michael Carruthers and Wittgenstein (10 and 139). In "The Crisis of Identification" (90), Tully describes political identity as having a "tangled" nature, and suggests that cultures and legal forms "overlap" and interact.

¹⁰ That is, it is often plausible in Canada to assert self-determination on the grounds of "territorial predominance." See *Restructuring the Relationship*, 179-80.

¹¹ On the recent past of Wampanoags see Jill Lepore, 1998.

¹² Clifford bears no responsibility for the use of his ideas by political theorists. When he uses the word "authority" he is primarily referring to whether or not texts and anthropological evidence possess authenticity. He does not apply the term to demands for obedience nor to rational acceptance of constitutional arrangements.

¹³ Later Tully (2000, 474-5) distances himself from Hegel by saying that the latter's struggle for recognition applied to the relation between two actors whereas modern relations are complex and multilateral. In this form of recognition Tully is appealing to naturalistic identity politics in order to avoid artificial consent theory. However, the conditions of political dialogue to which Tully refers include "reasonable counter proposals," democratic negotiations, and shared principles which do not seem very complex or multilateral. In another recent account of recognition Tully suggests that political engagement is a kind of play aimed at generating self-respect and self-esteem (2000b, 231). These more recent accounts stress the

positive aspects of self-recognition rather than the harsh objective and economic aspects of Hegel's views on human relations.

¹⁴ See Rubin and Brown, 93-4. Tully believes — apparently as an article of faith — that illocutionary games of reciprocal disclosure and acknowledgement prevent violence (see 2000, 479).

¹⁵ Michael Milde (1998, 142) has observed that Tully has failed to specify which criteria are required for a group to secure legitimate recognition or to say when a group can refuse to accommodate another group.

¹⁶ There is some evidence that indigenous Canadians regard increased democracy as the death of their own style of decision-making (Royal Commission on Aboriginal Peoples 1996, 134).

Reconciliation Constitutions: Canadian & Australian Northern Territories¹

Introduction

In 1945 an apparently well-established Canadian nation-state remained anchored in the farmlands, towns, cities, and more hospitable valleys of the South along the USA border with brave outlying pockets of population farther North engaged in hardrock mining and forest cutting. We knew Canada's identity and felt pride after national sacrifice and survival in Depression and War. When Canada looked to the exotic and "empty" North we Southerners expected its inevitable material and socio-cultural assimilation, and thought we would provide the "men and *materiel*," plans and ideas. Half a century later an industrial society's material benefits and litter had, indeed, spread everywhere, but the country had changed in less predictable ways. Phrases like "garrison mentality" for Canadian culture had emerged from a changing South, and our "absence of mind" towards the North.² Then the unheard permanent residents — Inuit, Dene, Métis, Cree — voiced their own views and Northern agenda in ways we could no longer not hear. A genuine political and cultural *negotiation* began, one which has changed the North and all of Canada. This process has enlarged Canadian nationhood, and Canada's contribution to the world outside.

These changes in Canada occurred largely during the unpromising and often immobilising **ice age of Cold War nuclear confrontation** in the Arctic; public and official anxiety over Quebec secession, in particular, and ethno-cultural separatism, in general; and loud or sullen (or both) national constitutional stand-offs. Associated anxiety always provided facile arguments for delay or denial of reforms.

Nevertheless, determined indigenous peoples, a sympathetic Southern public, and principled policy-makers, lawyers and judges wrought great changes.

Below I will discuss the political transformations in Northern Canada from 1945. Although those political challenges and upheavals have had distinctive features, Australia shares many of their dynamics. I will briefly consider Australia's Torres Strait and Northern Territory (NT), and the relevance of Canadian experience.

Background

From 1945 Canada, Australia and other countries searched for ways out of the institutional racism which World War 2 and creation of the United Nations had made intolerable (Miller 2000). The idealism, energy and financial prosperity released by the end of Depression and War saw the White Man³ now press his beneficence and ideas for socio-economic improvement on the last national hinterlands. Indigenous peoples in these remote places began to press back with equal determination. A negotiation in fact if not in theory began to take place — between national governments and hinterland peoples. The nature and role of political economy, society, regional culture, and values have been the agenda, explicitly or implicitly. The fact that national political organisation and social patterns are not yet entrenched on the frontier has provided opportunities to build afresh and to question old prejudices.

One of the most widely shared and blinkering myths about northern territories is their unique character and special imperatives. Such notions are used by settler populations to claim social and political ascendancy over long-established indigenous peoples, and often mask banal and predictable ethno-political conflicts. Non-indigenous peoples in these northern territories regions, including their elected bodies, have often been so unhelpful in clinging to old notions of ethno-cultural superiority as virtually to marginalise themselves in national designs of new hinterland or indigenous policies.

In varying degrees post-war governments in Canada and Australia — as also in Northern Scandinavia, Alaska, the northern North Atlantic (e.g., Greenland, Faroes), Russia (including Siberia), and New Zealand — have sought legitimating processes and workable structures to achieve accommodation or reconciliation with indigenous peoples within nation-state political and legal frameworks (Jull & Roberts 1991). Government law offices would not admit to such uncertainties, at least publicly, but nobody wants disputed or restless frontiers, or sullen or skeptical minorities occupying them. Dispute is precisely what frontier peoples have tended to bring, e.g., dispute about:

- whether “northern territories” are the settler or economic development frontier which national majorities assume they are, or in fact indigenous homelands;
- whether official political and jurisdictional boundaries make sense;
- who owns and has the right to use land and sea territories, and their resources;
- whether introduced European governing systems are legitimate or appropriate;
- what social and cultural norms (e.g. language use and cultural rights), and what legal standards and customs, are appropriate;
- why newcomers and settlers should be celebrated as pioneers or founders and their individual rights take formal precedence over the long-standing and customarily assumed collective rights of indigenous peoples; and
- whether material benefits, government priorities and development policies should continue to favour newcomers and transients rather than the permanent indigenous population.

As indigenous people have gained education and familiarity with the White Man’s values and jargon, their forceful arguments introduced or shouted in mainstream forums and media, or placed before judges

in court, have been impossible to ignore. Their points are very simple: they are morally and actually the inhabitants of regions often much larger than their small numbers would imply, and they feel responsible for those regions and insist on the responsibility of others. Just as issues of

- *social justice*,
- *cultural respect*, and later of
- *legal rights*

have been increasingly resolved in their favour *vis-à-vis* government administration, itself more enlightened in the post-war era, so

- *environmental science*

and related activism have recently increased official and public understanding of indigenous realities. Along the way indigenous regions and cultural groups have also become

- *self-conscious contemporary political communities*

with a bundle of aspirations and motivations which are widely and often loosely labeled *Self-Determination*, not least by the peoples themselves.

Today, hinterland evolution and reconciliation in Australia and Russia remain in serious doubt, the latter because of a breakdown of political structures and the former because of a breakdown of political and legal will.⁴ Russia has some fine draft legislation if only it had an administration and funds to implement it, while Australia's new recalcitrance is more surprising. (In the first half of the 1990s, under a Labor government, Australia had shown exemplary vigour in national indigenous policy, see Tickner 2001.) Hinterland Australia has an active indigenous political agenda, however, and many indigenous organizations working on various parts of it, from the most practical application of bandages to concepts and questions of political and constitutional reform (Jull 1994a; IWGIA 1993-; *The Northern Review* 1992-).

Canada's Northern Territories

In Canada three jurisdictionally distinct and formally recognised northern territories with Arctic coastlines — Yukon, Northwest Territories (NWT), Nunavut — make up 40% of the national land area (and 0.0031% of the national population), while the northlands of seven provinces form a mid-northern swath of country from Atlantic to Pacific with almost as much territory again. In 1953 the federal government established a Northern administration unrelated to the old Indian Affairs Branch with its aura of failed indigenous policies. The Northwest Territories (NWT, including what is now Nunavut), and Arctic Quebec (which is now increasingly known as Nunavik), were the particular concerns of the new federal administration. However, the Yukon, a separate territory since and because of the 1898 Klondike gold rush, and the Mackenzie Valley of great lakes and rivers which make up the Western NWT (and including the treeless Inuit coasts and islands of the Western Arctic), were subject to no less attention with their easier and more established access and infrastructure. At the 2001 census the Yukon had 28,520 inhabitants of whom 6,540 were indigenous (23%); the NWT had 37,100 of whom 18,730 were indigenous (50%); and Nunavut, 26,665 total with 22,720 indigenous (85%). Canada's total population was 29.6 million.

Overlapping this is the Inuit region, fully one third of Canada comprising Northern Labrador (in Newfoundland province), Nunavik (Arctic Quebec), Nunavut (the old Eastern NWT), and the Western Arctic which is the north of the remaining NWT — that is, a region overlapping the old NWT and regions to south and east. This has remained a remote zone for airplane or seasonal shipping access only. In that northern third, Inuit make up 80-90% of the population, although their total number in Canada is merely 45,070.⁵ It is a land with a few scrub trees as its southern fringe, and windswept tundra, sea, rock and glacier making up the rest.⁶

The Canadian Experience

Northern territories in Canada were initially defined either arbitrarily by political boundaries imposed by the White Man (like the straight lines carving up Australia's interior), or were quite undefined. The NWT and Yukon were cases of the first process, and Nunavut of the second in which local people claimed their own identity and boundaries, albeit ultimately contained within some pre-existing international and intra-national boundaries (Jull & Craig 1997). Government policies have made trans-boundary indigenous structures virtually unworkable, although associations of jurisdictionally defined bodies, e.g., Inuit Tapirisat (now renamed *Inuit Tapiriit Kanatami*) representing Inuit of Northwest Territories (NWT), Nunavut, Quebec and Labrador, have proven effective. A group of communities, or villages plus their out-camps, make common cause in relation to some external issue such as a hydro-electric project or imposed social policies, and develop a sense of regional unity around elements of their traditional culture. Rarely do all such groups within the region accept or share this new identity happily, while others farther afield may feel left out. When this newly self-conscious regional community discovers how few legal rights and little political influence it and its members are seen to have in the eyes of the White Man's system, serious political mobilisation begins. Non-indigenous expertise and political support are sought — perhaps a lawyer and some church group outside the region, and perhaps with help from an academic researcher or someone who has worked as nurse or teacher in the region. Whatever the specific issue or subject of initial grievances — a health epidemic, lack of housing, polluted food habitat — a fairly stable clutch of issues form into a whole political agenda. This almost always has a demand for self-government and legal recognition of territory and resource rights at its centre, and draws heavily on socio-economic disadvantage, inferior or absent public services and cultural discrimination as significant grievances.

Then almost any issue from national defence to census surveys may become a point of contention, the real issue being the lack of politico-

legal recognition of the people and consequent failure to have them make decisions for their region and people. Regional whites other than those already enmeshed in the indigenous community enter the fray, insisting on following national institutional traditions, i.e., the ones they can, do, or expect to dominate whether or not they are a population majority. Their raw self-interest, their often patronising or racist attitudes towards indigenous people, and the plain injustices experienced by indigenous people often balance the political scales or assist the indigenous side in the eyes of the wider provincial or national public. Indigenous people may get hold of some first-rate young non-indigenous expertise, as in Nunavik, Nunavut and the NWT, who help pitch a modern and professional case to senior governments and other power *élites*.

Process and negotiation have been the keys to Canadian indigenous policy progress and to northern territories (Jull 1995; 1999c; 2001a). These have been more obvious in hindsight than to most of us involved at the time in various battles. That is, the process or negotiation has been often implicit rather than explicit — slowly moving or evolving changes of position or outlook brought by public disputation rather than quiet and rational conversation or working through of problems around a table. However, after initial fierce battles across the northern hinterlands which make up most of Canada, a series of conventions have developed, a political culture which is there for the using. (Unfortunately some governments — or ministers within them — continue to provoke crises through their own foolishness or arrogance, and some indigenous leaders schooled in habits of earlier confrontation are also too eager to go to the brink.)

Initially the South saw the North as poor people in ragged animal skins and could think only of material change to make them look more like us. Surely the minerals presumed to lie underground throughout the hinterland would provide jobs and so “modern” schooling became an official priority. It took a long time before the Canadian public could see past prejudices about “Stone Age peoples” to recognise their shared humanity and sympathies with Inuit, Dene

and other Northern peoples. The James Bay project in Quebec from the early 1970s produced some quick learning in respect of the Cree most directly and immediately affected by the project, while the Berger hearings of the mid-1970s in the NWT became a sustained national teach-in about Northern and indigenous realities, one which at last made the North a general political issue and subject of public awareness (Berger 1977). There Inuvialuit (Western Arctic Inuit), Dene and Métis spoke through their articulate young people or interpreters in their villages in terms all too clear to Canadians: the North was a social mess which no amount of white triumphalism and glossy public relations could hide any longer. Official good intentions, which were seen by few “natives” as good at all, were not changing a divided society where whites, mostly deriving income directly or indirectly in service of indigenous administration, had most of the visible material benefits and all the power. The idea that Canada could no longer simply move in with lots of Southern material clutter, open schools, set up a Mountie post and a nursing station, and encourage geologists to find mine or hydrocarbon sites — that this Canadian model of national expansion was no longer enough, and was even of doubtful relevance — was a shock to many Canadians. Many Canadians favour simple assimilation to cross-cultural complexities, of course, but know its time is past.

Having established that Inuit and the other Northern peoples were people, not strange beings with inherently greater natural powers and less humanity than ourselves, it became possible to engage in what white Canadians recognised as *politics*. All the years of Dene protests about Treaties unfulfilled had gone unheard, but now that Northern peoples were “speaking our language” in every sense, thanks to the schools, public debate began. Ottawa, used to administering the North, tried to come up with new and better programs, but Inuit and others wanted Northern political decision-making, not Southern expertise. They were especially suspicious of decisions serving Southern priorities for Northern “resources” (such as the caribou herds or mineral deposits).⁷ The 1970s were very bitter in the NWT, a region which was merely the leading edge for a whole era

of indigenous-white, indigenous-government conflict across Canada — that is, the search by Southern governments and by industries they supported for Northern resources in Provinces and the two (now three) formally designated Territories turned the era into one of massive disputation. However, Canadians had learned enough that now the indigenous side was listened to more respectfully, while the insights brought to public forums by indigenous peoples and their environmental advisers and allies were changing the whole idea of Canada. No longer one huge empty place with lots of room for mistakes, now the North became a patchwork of peoples, each with its own unique ways and outlooks, living in home territories amid lands and waters of intricately connected eco-systems where it could matter very much precisely where mistakes were made. Lancaster Sound or the calving grounds of caribou herds, for instance, were not places in which to risk oil spills for fear of wrecking environments far and wide.

Governments often responded poorly. They believed that “the natives” did not understand law and politics and that mere assertion of official will would bring things back into line. They made firm decisions which proved remarkably *in-firm*, failing to understand that what they faced was *not* callow rudeness to the Crown and disrespect for Canada’s long hard effort to extend public order and institutions into an expensive-to-serve hinterland. Rather, it was a general reaction to inappropriate policies and socially inequitable outcomes on the ground. Those Establishment whites who took time to listen carefully, e.g., the Courts, increasingly found in favour of the natives. The struggle was not of non-Europeans against Her Majesty — “Confound their politics,/ Frustrate their knavish tricks” as *God Save the Queen*, long the Canadian as well as British anthem helpfully advises of outsiders — but of people dependent on living wild resources vs. an industrial state and its “liberal development model.” Of course, nothing was so simple — Ottawa talked about and believed in rugged free enterprise even while it created, in fact, the ultimate welfare state in the North.

Canada's Northern Reconciliation

The outcome of new northern territory resulting, huge like Nunavut and Nunavik, or simply large like some of the Dene regions — Deh Cho or Dogrib (Tlicho) — of NWT/Yukon, has a certain pattern. While it appears to sit within existing Canadian liberal democratic norms — and much futile emotional energy is spent on arguing if Nunavut is *really* indigenous self-government or *merely* a conventional model — its novel or exotic features are clear to its inhabitants. There is a dual constitutional structure, with the governing institutions rather like or utterly like the usual elected pattern of a clutch of local councils nested under a regional government, while the other half, i.e., the land, sea, resource and cultural provisions are exclusive to indigenous peoples and lie quite outside the scope of non-indigenous people to touch. This latter indigenous arrangement is entrenched in the *Constitution Act, 1982*. Sections 25 and 35 recognise any existing rights discovered by the Courts and validate any rights negotiated in future as part of northern territory or other indigenous claims settlements, all these to take precedence over the general constitutional Charter of Rights. Constitutional amendment is not only very difficult but requires indigenous consent.

The package of arrangements also includes a large capital fund under control of the indigenous people in question, this as compensation for past erosion of their rights and loss of territory, to be used for development or other projects with the interest providing running costs for various businesses or representative bodies. The package also includes categories of land/sea ownership and exclusive use, including some sub-surface rights, remedies for development impacts, land use and environmental management or co-management bodies sharing with senior governments the decision-making power in respect of resources and development in the whole region, and preferential rights for indigenous access to business and development opportunities (Usher 1997; Harrold 2002; Scott 2002). Various other features are included, such as official status for the indigenous language, social

and cultural development programs, enhanced public services in key areas, and various “catch-up” programs for capital needs (e.g., housing, public facilities).

In sum, grafted onto a basic European liberal democratic system suited (or *un*-suited, depending on one’s viewpoint) to all areas within a country is another system in recognition of the cultural, social, political, environmental and developmental imperatives of a specific place and its indigenous ecologically sustainable space. Opposites are joined. This is the basic model, but the larger cases like Nunavut have many additional features by virtue of their size and opportunities. E.g., Nunavut is a full participating member of the Canadian federation of federal, provincial and territory governments, and represents itself in the organs of executive federalism which are Canada’s highest policy and political forums.

However, the explicit design is less important than the spirit of reconciliation or accommodation in its making (Jull 1998b). Some key steps for government were:

- recognition that the old frontier model of development with its “gold rush” or equivalent boom, hoped-for trickle-down benefits, social and environmental costs, and transitory nature was no longer a sufficient or appropriate basis for consolidating a contemporary society or economy in remote areas;
- acceptance that the permanent indigenous population, their languages, traditional lands and waters, and culture must be seen as cornerstones of hinterland society, not obstacles to be merely assimilated or wished away;
- investment in socio-economic reforms and programs to ensure that indigenous peoples are genuine equals of newcomers in the politics and direction of hinterland society, ensuring elimination of deep grievances and achievement of social peace and stability;

- acceptance that clever and innovative planning and administration by outsiders are not a workable substitute for the legitimacy or effectiveness of local and regional indigenous political processes;
- sponsoring of formal and informal political reconciliation mechanisms to broker accommodations between northern whites and indigenous peoples;
- (re-)negotiation of regional and indigenous destinies within nation-state constitutional, political and legal structures just as the parts of Canadian (and Australian) federation devised suitable structures in the 19th century (e.g., Canada's recent comprehensive claims processes and related national constitutional framework, Jull 1981; 2001a);
- recognition that ecologically sustainable development to ensure continued regional traditions, livelihoods and environmental values is essential to hinterland futures (Jull 2002); and
- the recognition that incorporation of dynamic “new” peoples and regions in the nation-state strengthen national society, culture and identity.

Along the way the Canadians realised that they were not merely making grudging concessions to malcontents but working with co-nationals in enlarging and strengthening the national space. This psychological shift makes intelligent cooperation much easier.

Australia's Torres Strait

The Torres Strait Islands lie between the north-eastern tip of Australia — the Cape York Peninsula — and Papua New Guinea (PNG), a creation of the last Ice Age when rising seas again covered a large land-bridge between Australia and its northern neighbour. These small islands and coral reefs are home to a Melanesian people, the Torres Strait Islanders, living in some 19 communities with a total

regional population of c. 8000 of whom c. 6000 identify as indigenous Islanders. The region is part of the state of Queensland. Most non-indigenous people live on Thursday Island, the small regional supply and administrative centre now spilling over onto immediately adjacent islands, itself as racially and culturally diverse with South Pacific, Asian, and European origins as any imaginable, a vestige of the old South Seas of Conrad's novels and Maugham's stories. Most of the early pacification, colonisation, Christianisation and British Imperial incorporation of the region was conducted by a "métis" mix of South Sea Islanders who were the real players in Britain's Pacific economy, a fascinating story in itself.⁸

Like Inuit, Torres Strait Islanders have sometimes benefited, and sometimes not, from being numerically few, remote and little known compared with the principal national indigenous minority, the Aboriginal peoples. Subsistence fishing and Tropical "welfare colonialism" (in Beckett's term, 1987) have seen these remote islands left largely to themselves since the marine industries boom of the 19th century came and went. Both Queensland and federal governments have sponsored elected administrative advisory bodies, the Island Coordinating Council and Torres Strait Regional Authority, respectively. Regional self-government and some form of sea claims settlement are the principal shared goals apart from better health and social services, and more jobs. A significant political resource is the access to and relatively good relations with the Coalition political parties. The region's calm is deceptive, uneasy. During the early 1990s the region came close to a political settlement during the life of the Keating federal government when his cabinet moved to accept regional self-government despite Queensland government opposition; today proposals for a sensible conventional approach to that goal progress slowly, without the sea rights element (TSRA 2001). Political trouble and controversial resource mega-projects in adjacent West Papua (Indonesia) and Papua New Guinea; fears of marine pollution impacts on Islander health; fishing and its profits going to outsiders; neglect by governments at home; dangerous cross-border movements of people, weapons, drugs, diseases and pests; the example of many

exciting political experiments in full statehood and home rule among related Melanesian as well as Polynesian peoples to north and east; the large population of educated and often highly politicised Islanders living outside the Strait but keeping in touch with events at home; and the volatility of sea rights and self-determination issues when given any fuel, mean that Strait politics could erupt at any time.

Australia's Northern Territory

Australia's Northern Territory (NT), like Canada's NWT, Yukon and Nunavut, is under federal jurisdiction but a self-governing entity with powers like those of states (or provinces) in most respects. In this central slice of the continent, there were c. 200,000 inhabitants in 2001, of whom some 25% were indigenous. The White Man's NT seems to consist of a red line on the map, the Stuart Highway, running approximately along the line of the telegraph line which in the 19th century linked Australia to London, with the four predominantly white towns of Alice Springs, Tennant Creek, Katherine, and Darwin along its route from south to north. Today the NT is a patchwork of Aboriginal lands (about 50% of the total area) won under 1976 land rights legislation, being mostly former Aboriginal reserves and large swaths of arid land unwanted by the White Man, the rest being mostly large cattle stations of very mixed productivity. The populist Right (Country Liberal Party) government in power in the NT from the beginning of self-rule until 2001 affected to believe that if only it could wrest control of the Aboriginal lands from the national government and from the Aboriginal land councils it would miraculously make the desert bloom and other wealth leap out of the ground. As usual in such regions, vehement populist free-enterprise rhetoric among settlers is in inverse proportion to the dominance of government spending in the economy. The belief that mother tongues are disposable and best forgotten in aid of linguistic assimilation has been disproven worldwide, and nowhere more bitterly than in Canada's Francophone and indigenous homelands,

so fortunately such a fiasco could now no longer happen in Canada (Nicholls 2001).

From 1985 a constitutional committee of the NT legislature inquired into statehood and issued many reports. While this work was worthwhile within its own terms of reference, it was of limited relevance to the indigenous community who periodically created their own forums for discussion of NT-wide and more local politico-constitutional reform (e.g., Pritchard 1998), and who sponsored their own studies (e.g., Crough 1989; Jull 1996). Some major conferences have highlighted the chasms between indigenous and white views more than they have bridged them (e.g., Jull et al. 1994; Gray et al. 1994). Until recently Canberra has made clear that NT progress towards statehood would depend on greater NT government respect for and accommodation of Aboriginal interests; in 1998, Prime Minister Howard supported a plan which virtually excluded Aborigines but whose divisive nature saw it defeated at referendum (Jull 1998c). The NT Labor government elected in 2001 has adopted a more open but less urgent approach to statehood and constitutional reform, having many pressing reforms in other areas to enact. Its legislature constitutional committee consultation document is most promising (LANT 2002).

The social dysfunction and violence in NT Aboriginal communities and fringe camps, and other rural and remote locations around Aboriginal Australia, provide a black pornography of squalor.⁹

Even the federal minister took this to the United Nations as if to show it off, blaming it on Labor and on “self-determination” (Herron 1999).¹⁰ Indeed, it has sometimes seemed the federal government’s substitute for policy or programme innovation, a tactic said by electoral analysts to appeal to racism among a key section of Coalition voters (Millett 2002). In recent Australia indigenous need and dimensions of a human crisis have been turned on their head in indigenous affairs, and public policy trivialised and lost. The use of racial “dog whistling” and other American electoral ploys have been uncritically imported regardless of their social *and moral impact and*

relevance in Australian society. As in so many ways the USA may be the *least* civilised of “first world” countries — hardly a role model. In indigenous affairs the American past is instructive (Trigger & Washburn 1996; Wilson 1998), but until the late 1980s the USA and USSR did much to obstruct the development of indigenous rights at the UN. For our purposes post-war Alaska is the best American experience (McBeath & Morehouse 1980; 1994; Mitchell 2001; Jull & Kajlich 1999)

The difficult NT context is not generally understood, partly because the former NT government worked so hard to appear to be a “state” just like the others (Jull & Rutherford 2000). For instance, a much-read new book untangling recent national indigenous social policy debate to return attention to black clients concludes with a chapter on the NT (Neill 2002). The chapter assumes that the NT, like Australia’s south-east, is an established country with a political culture and institutional framework into which black needs may fit and resolution be found. Nothing could be further from the truth. The NT is mostly indigenous or pastoral land, the White Man is concentrated in a few areas and is highly transient, with 20-50% population turnover between elections (Loveday et al. 2002, 5-6), and even the most basic consensus on political culture, regional values, the role of the permanent population, and indigenous politico-cultural rights has never been attempted. While the white precincts are mostly affluent green suburbs, indigenous hinterland camps and villages vary widely and are remote in language and culture from Australia’s “mateship” and “fair go.” Two *solitudes*, indeed.¹¹ However, the NT is a good example of the type Australian opinion is seeking of how and why basic agreements and constitutional frameworks must precede real progress on “practical” and “concrete” improvements and ease of suffering (see Jull 1998b for one such NT resource).

Nevertheless, there is, e.g., an established process in Central Australia to plan for the future through the principles of Aboriginal defined governance set out in the Kalkaringi Statement of 1998 (Pritchard 1998). This work of the Combined Aboriginal Nations

of Central Australia (CANCA) grew out of Kalkaringi to advance the Statement's aims (Jull 2000-2001). More than half a dozen communities have been initiated and continued the research-and-action process of CANCA. This can be traced to the work undertaken by Batchelor College students at Walungurra/Kintore in the mid-1980s, some of it documented by Keeffe in *From the Centre to the City* (1992). That work was given national significance because it formed the philosophical and promotional basis of the National Aboriginal Education Policy at that time. Significant outcomes of this community based research have been the foundation of One United Voice, a grass roots indigenous self-determination movement, in 1992 following a number of disputes over delivery of services between communities and the NT government, including power, health, education, roads, local government, and law enforcement (see also Crough 2002). Other milestones significant to this research have been the 1993 NT Aboriginal Constitutional Convention, responses to the Reeves Review of the Land Rights Act in the late 1990s, and the Kalkaringi and Batchelor Statements in response to the NT government's push for statehood in 1998. All of which has led to the CANCA work developing models for sustainable Aboriginal governance.

The opportunity exists for serious NT politico-constitutional reform. However, the case will have to be made and loudly because neither the NT nor national public has heard the arguments. The debate, such as it is, is stuck in the rut of NT white cries that it is unfair for their legislature to be over-ridden, e.g., as occurred in respect of euthanasia legislation, a glib slogan which works well. In Canada the Northern peoples had a long and loud regional debate echoing nationally, triggering a larger and often sympathetic national debate, plus a national government anxious to damp down racial tensions by brokering political peace.

Reconciled Peoples and Territories

Every year in Australia's south-eastern ecumene I tell students — surprised, unbelieving, or simply annoyed — that the Northern Territory is not a remote exotic place but very much their business. The Constitution requires that their elected Representatives and Senators in Canberra set the terms and conditions of any statehood constitution for the region. This requires Australians to express their national values, political culture, and institutional ideals.¹² It is unlikely that many thinking people would accept that the 1890s “White Australia” political consensus on states’ and Aboriginal rights is sufficient or appropriate today, let alone in a region which remains largely Aboriginal cultural territory, but that is demanded by the former NT Country Liberal party government and many other statehood proponents.

Nunavut has been a symbol of change in Canada, fulfilled in its formal launch in April 1999, an international source of wonder (Jull 2000a; 2001a; 2001b; & 2001c; see also Bell 2003). Such developments in hinterlands have been inspirational in renegotiating indigenous-white relations and strengthening respect among all peoples in Canada (Russell 1993; 1999-2000; & 2001; Jull 2001b). As the Arctic Peoples Conference of 1973 had demonstrated, Northern Canada, the Sami (“Lapp”) North of Europe, and Greenland were all experiencing similar conflicts and problems (Kleivan 1992; Jull 1998a; 1998c; 1999a). But each country tended to look at things too much in national optic; each tried to find solutions to common problems inside national conventions; and each to use its own form of national denial.¹³ Circumpolar and wider access became important in helping Inuit and Indians to convince Canadian governments and political *élites* that problems were more concrete than symbolic, and that their dynamics were a general problem of majority power relations with minority peoples, not merely of Canadian or Norwegian or Australian national peculiarities. Likewise, the experience of all countries were

potentially useful as guide or warning for others — and there remains no better “manual” (Sanders 1977; Jull 1999a).

The Canadian government, like other Circumpolar countries, has overcome past shame about hinterland indigenous social conditions and now participates happily in bi- and multi-lateral international dialogues involving indigenous representatives, officials or politicians, academics and others together to discuss and, it is hoped, help overcome these. Awareness of the experience of others at home and abroad is now a major element in the creation of the territory of Nunavik in Northern Quebec. The Australian government since 1996, however, has drawn on foreign indigenous comparisons only selectively and defensively, usually to “justify” inaction (e.g., P. Charlton, *Brisbane Courier-Mail*, 1-6-2000). Federal ministers Herron and Ruddock have had some meetings abroad, the latter visiting Nunavut, Sápmi (North Norway) and British Columbia, but the Australians also ensured that indigenous elements were dropped from the 54 Commonwealth of Nations countries’ March 2002 meetings near Brisbane.¹⁴ Information on “first world” indigenous experience and precedent circulates or is published in Australia, however, and no Australian indigenous spokesperson or policy professional today would be unaware that other countries have contemporary experience with indigenous socio-economic problems and political reforms.

Canada has many indigenous territories and governments now being created — or re-created. Nunavut and Nunavik are very large, while some others are relatively small regions. The Deh Cho (“Slavey Indian”) process of the south-west NWT involving 10 local First Nations and three related Métis communities is proving to be almost a textbook cases of principled rational reconciliation despite deep difficulties and divides (INAC 2001-2003). In addition to federal Treaties and land claims settlements, Quebec province has recently concluded major treaties with regional peoples, including Inuit and Cree, to govern relations and especially organise and enrich economic and public service benefits, a bold and unprecedented development. Meanwhile, profound and necessary rethinking of

indigenous governance from the indigenous historical and cultural perspective is being led by philosopher-activists like Taiaiake Alfred (1995; 1999; 2001) and its implications for — and highlighting the limitations of — Western-style liberal democracy. This exploration is being taken up vigorously by young Australian scholars like Lyndon Murphy at the University of Queensland (and see also Close 2002 for a demonstration). While some Australian governments hope for finality, an end to Aboriginal and Torres Strait news on page one of the press, new relationships will involve the opposite: engagement and participation as a continuing story in a larger Australia.

Factors in Canadian success have been patience and persistence on all sides, processes to work through problems, political consensus and steady political will on aims among northern indigenous peoples, and sufficient national commitment to problem-solving in the name of social justice. National, no less than northern, information and publicity campaigns were needed. At all times informed and committed non-indigenous friends of “the natives” and sections of the public were essential allies, notably the Project North church-run support group, and the unique Northern policy think-tank, Canadian Arctic Resources Committee. For all the attention that NT Aboriginal art and Torres Strait quarantine anxieties receive in national consciousness, there is very little Australian awareness of political issues and aspirations in those regions except when Kakadu’s uranium is debated or Islanders board an interloper’s boat.

Canada’s general process-oriented political culture has demonstrated its worth in these matters. What seemed surprising or radical demands when first voiced by indigenous leaders in the 1960s and early 1970s have become familiar and mostly unthreatening since. Also, a federal system of government is designed for diversity and accommodation. Indeed, the *Federalism Forum* held in Old Parliament House, Canberra, on 19-20 October 2000, concluded in its *Communiqué* 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)

Not all Canadian indigenous observers are happy about the northern territorial approach. Some of these are strong critics within the North, strong and independent minds, as should be hoped and expected — every vigorous society needs prophets and conscience. Others outside the North remain uninformed about the Northern “model,” especially the confusing land ownership and management provisions, and the entrenched status of the claims settlement in the Constitution. Some critics even argue that Inuit and others should strengthen their traditional cultures first — it is simply incredible to imagine that any of those critics would have wanted their own peoples, had they had the chance, to pass up the opportunity for political control of their traditional territories as the top priority. Ice-breakers and tankers were crashing around Nunavut's most critical seas during the years before the political and land/sea claims agreements. Planning, development, and control options could have been foreclosed forever leaving Inuit in rags along a white man's Northwest “canal.” Now that Nunavut is in place, and the earlier model of Nunavik, Inuit in both regions have been applying themselves and their new institutions and means to rebuilding and renewing their cultures and way of life, complete with fine arts and new media (e.g., Angilirq et al. 2002; Kunuk 2000).

Canadians have long claimed the Arctic or “the North” as a positive defining identity. One-liners to that effect are a staple of political speeches delivered at home and abroad. But the North was usually little more than a bleak challenge to be overcome until recent years. As long as our imaginations were limited to Victorian Age “progress” of steel and smoke, and the spread of white settlement, Northern realities eluded us. Some were more poetic about the hinterland, but Canadians thought poetry indecent in public. Now, however, indigenous peoples have forced us to think and talk about the North

and the whole country in new ways, and in the North they have had relatively little difficulty in overlaying outsiders' arbitrary divisions with an older schema of eco-systems and homelands. Instead of the old garrison-duty mappers' straight lines we have the locals responding to less visible imperatives of language and the seasonal rounds of livelihoods in defining areas of interest, rebuilding local and regional indigenous communities to overcome new problems and seize new opportunities. The "garrison" is now serving and backing up these arrangements, and no longer beholden to fading or forgotten ideals of someone else's empire which once issued them their red tunics and instructions. These are important subjects, and Canadian scholars in Australia like Adam Shoemaker, Elspeth Probyn and Christy Collis are offering penetrating and comparative Australia/Canada studies.

Reconciliation in practice may be expressed as the process of mutual recognition, acceptance and accommodation of indigenous and non-indigenous peoples within the nation-state by governing institutions and the public, accompanied by a genuine and persistent attack on indigenous social disadvantage and grievance. Indigenous peoples were excluded in law and in fact from modern nation-state society until recently (Jull 2001a). They are all well aware of the continuing impact of that in their lives and prospects today. Only constitutional, political and moral initiatives such as those appearing or promised in "first world" northern territories can foreseeably provide the context in which the more intangible dimensions of reconciliation bloom widely. As the past 1200 years of Sami-Norwegian relations on the northernmost coasts of Europe remind us, reconciliation does not "just happen over time" or as a corollary of equalised "practical" socio-economic outcomes (Bjørklund et al. 2000; Brantenberg et al. 1995; Gaski 1997). Political will and political action are required.

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Notes

¹ This paper is dedicated to the late Dr Elspeth Young of Canberra, well known to many in this city and at this conference, as well as in Remote Australia, for her commitment, work, friendship, and charismatic example in hinterland studies as field-worker, researcher, scholar, and author, e.g., of her book on Northern Australia and Northern Canada, *Third World in the First*.

During the writing of this paper I had many valuable discussions with Sophia Close, as well as reading drafts of her research on indigenous self-determination vis-à-vis dominant Western political liberalism.

² Quotes are from Professor Northrop Frye (1971) and from Prime Minister Louis St Laurent, 8-12-1953, quoted by Hon. Gordon Robertson 2000, p 114.

³ "The White Man" is a term well understood by indigenous and non-European peoples around the world. It refers to historical European domination, almost always by white males.

⁴ I write the phrase "legal will" days after the Yorta Yorta decision of the High Court, Canberra, further diminishes native title rights.

⁵ The same 2001 census reports national totals of 609,000 Indians and 292,000 Métis, plus 30,000 of mixed indigenous backgrounds.

⁶ For Yukon see Cameron & White 1995; Coates 1991a; 1991b; Coates & Morrison 1988; Dacks 1990. For NWT see Dickerson 1992; Dacks 1990; Jull 1984; 1994b; 2000b; 2001a; Young 1995. For Nunavut see Angilirq et al. 2002; Brody 1975; Creery 1994; Dahl et al. 2000; Hicks & White 2000; Jull 1991b; 1992; 1999b; 1999c; 1999d; 2001b; 2001c; Purich 1992; Soublière & Coleman 1999. For Nunavik, now largely the responsibility of Inuit themselves and the Quebec provincial government, see Jull 2001d; Makivik 1995; 2000; Mulrennan 1998; Nunavik Commission 2001; Saladin d'Anglure 1984a; 1984b; Scott 1992; 2001 – and Nelson 2003 for breaking news. For Australian views of Canadian northern experience see, e.g., Richardson et al. 1995; & Nettheim et al. 2002; Jull & Roberts 1991.

⁷ Federal caribou management and mismanagement were major grievances fuelling the anger of Nunavut land rights and self-government campaigns.

⁸ For Torres Strait background see TSRA website (<http://www.tsra.gov.au>) and references TSRA 2001; Lui 1994; & 1995; Beckett 1987; Singe 1989; Sharp 1992; 1993; & 1996; Shnukal 2001; & 1992; Ganter 1994; Kehoe-Forutan 1988; Mulrennan & Hanssen 1994; Mulrennan & Scott 2001; Sanders 1995; Arthur & McGrath 1990; Babbage 1990; Jull 1997; Close 2002; Groves 2001.

⁹ The word pornography seems apt because the “visuals” and data are passed around gleefully by white *élites* intending no action or reaction beyond their own titillation and disapproval.

¹⁰ By calling their domestic indigenous policies “self-determination” not least to impress overseas hearers, earlier governments may deserve at least a little of this poetic justice in the return misuse of the word. Nothing like self-determination or self-government in any large sense has yet been seen in Australia.

¹¹ *Two Solitudes*, a 1940s novel title, is a phrase applied since to Canada's Anglophone and Francophone communities.

¹² Of course, federal Parliament may reshape existing NT constitutional arrangements anytime it chooses, or shape other political institutions such as Torres Strait regional government, but it must be active in any grant of statehood.

¹³ As late as the late 1980s, for instance, the Norwegian government, even at comparative studies conferences which it hosted, would deny that it had problems of Arctic peoples by designating as "Arctic" only the Svalbard archipelago (without permanent residents), thereby finessing Sami and North Norway issues. So its officials professed themselves interested to hear the Canadians worry out loud, this while denying any problems of their own!

¹⁴ The Commonwealth of Nations is now one of the few international bodies with no indigenous policy despite including many countries with the best and the worst examples of indigenous policy in the world. For papers from the attempt to include indigenous peoples see Dr Helena Whall's project website, e.g., Havemann & Whall 2002.

A Social Indicator Comparison Between Indigenous People in Australia and Canada, and Approaches to Redress the Balance

We have witnessed is the exploration and colonisation of all parts of the globe during the past five hundred years. Over several hundred years we have seen the final phase of a dramatic cultural clash between European powers and the first peoples of Australia and the first nations of Canada. Initial English invasion was followed by incorporation into Commonwealth nations, or into an America united after a civil war.

Although Australian Indigenous people are clearly different from their counterparts in Canada and New Zealand, many of the issues they face are similar, and many feel great kinship when travelling and getting together.

All three nations are countries of immigration. Their initial Anglo-Celtic settlers introduced British institutions and common law, an emphasis on education and culture, including a love of sport.

To some extent Aboriginal cultural values around the world are different from those of a free-enterprise capitalist system. The Victorian Aboriginal Gary Foley said,

Koori Australians (the Victorian word for “man” or “Aboriginal person”) must be wary of those in our own ranks who promote free enterprise and capitalism for its own sake. As Kooris, we need to be ever vigilant to the subtle undermining of our cultural values. These are non-materialism, humanitarianism, compassion and the belief

that the group is more important than the individual (15).

On the other hand, socio-economic indicators can cover a wide range of economic and political systems, from free enterprise United States, the richest country in the OECD; to Norway, the second richest country by per capita income, and which provides extensive social support to its citizens. It is useful to consider the current socio-economic status of Indigenous people in Australia and Canada, as this provides the context for economic opportunities of both peoples.

Social, economic and health data refer to 2001 unless otherwise stated. In 2001, there were 460, 000 Indigenous Australians and 976,000 Aboriginal Canadians.¹

In both Australia and Canada, Indigenous populations are experiencing high growth. About one quarter of this high growth rate is due to people identifying with their Indigenous heritage. There is more scope for this trend to continue because 40 percent of Australian Indigenous people are married to non-Indigenous people, whose children may identify as being Indigenous.

Both Australian and Canadian Indigenous populations are young, with median ages of 20 and 24 respectively. In fact almost one quarter of both populations are attending school. A major Northern Territory education report by Bob Collins, a former Federal Minister, saw particular challenges in the Territory, and found that when the pedagogical bases of Western education were explained to Indigenous teachers and communities, there was an improved learning response. This suggests that we should be encouraging our oldest and wisest teachers to work with Aboriginal communities and not, as has happened during the past thirty years, our youngest and least experienced.²

The labour force participation rates for Australian Indigenous peoples is 53 percent and for Canadian Indigenous peoples it is 54 percent. That is, the Employment Rates are similar for those aged 15 years and above are similar, as are the Employment Ratios, that is, employed

persons as a percentage of the total population aged over 16 years which are both about 44 percent.

Between 1996 and 2001, the unemployment rate for Australian Indigenous people decreased from 23 percent to 20 percent. This was due to more Indigenous people working in businesses, to demographic changes in the Australian Indigenous community, to the success of government programmes and to the “work for unemployment benefits programme,” called the Community Development Employment Programme (CDEP). Under CDEP participants are classified as “employed.” The 33,000 participants comprise 7 percent of Australia’s Indigenous population. CDEP has helped Australia achieve a lower Indigenous unemployment rate – 23 percent in 1996 (20 percent in 2001), compared to Canada where it was 27 percent in 1996. Both Indigenous peoples populations are in part deeply attached to living in their own lands, far from growing labour markets.

In both Australia and Canada between one quarter and one third of Indigenous families are single parent families, figures far higher than the national average.

With regard to income, education, health and life expectancy, Indigenous people in Australia are worse off than other Australians, and worse off than Canadian Indigenous peoples.

A significant number of Aborigines in the Northern Territory, who comprise one seventh of Australia’s Indigenous people, have made the choice to return to their traditional lands to live a semi-traditional lifestyle. Understandably rural Indigenous people in the Northern Territory have lower incomes and less formal education than others. Most Australian Indigenous people are disadvantaged when compared to other Australians and to Canadian Indian populations.

Despite increased interest in education by Australian Indigenous people over recent years, they are much less likely to have a post school qualification, are poorer and have a much lower life expectancy than Aboriginal people of Canada.

Table 1: Socio-economic difference between Australians and Canadians³

Social indicator	Australian Indigenous %	Aboriginal Canadians %	All Canada %	All Australia %
Percentage single-parent families	28.1	26.6	14.6	14.0
Employment				
Unemployed	20.0	24.0	7.4	6.2
Employment rates (employed/ total population > 16 years)	44.0	44.3	65.5	59.0
Labour force participation (employed + unemployed/ total population)	52.7	54.2	63.8	63.7
Income				
Median income, adults (annual)	A\$13,900	C\$19,600	C\$26,250	A\$20,600
Education				
Speak Aboriginal language at home	12.1	13.3	-	-
Left school < 15 years	44.2	21.9	12.1	35.7
Attending school	24.2	22.5	17.5	17.8
Post-school qualification	13.6	36.6	50.9	40.2
Completed certificate and diploma	8.7	17.1	20.2	21.4
With University degree	2.6	3.3	13.4	12.1
Health				
Infant mortality rate (/ 1000)	14.0	11.6	7.5	8.3
Median age	20.0	24.0	35.0	34.0
Male life expectancy at birth (years)	56.0	68.2	74.6	76.2
Female life expectancy (years)	63.0	75.9	80.9	82.7

There were 976,000 Aboriginal Canadians among 29.6 million Canadians in 2001, and 460,000 people identified as Indigenous in Australia's population of 19.5 million. The above information has been compiled from various sources.⁴

This difference in Indigenous social indicators is particularly significant, as the unemployment rates, school attendance, percentage of people with a certificate or diploma, health status, median age and life expectancy of all Australians and all Canadians in total are broadly similar. In Table 1, we can see that on average, Canadians are richer and better educated in terms of post-school qualifications.

There have been improved school retention and lower infant mortality rates during the last five years for Indigenous Australians, but improvements in health, education, social and economic wellbeing are needed.

An important indicator is Life Expectancy as indicated in Table 2 below. Sadly there is a gap of some twenty years in life expectancy between Australian Aboriginal people and other Australians. Australian Aboriginal life expectancy is considerably lower than for African Americans, Maori, Native Americans and Native Canadians. It has been noted that Indigenous people of Scandinavia have broadly the same life outcomes as other Scandinavian citizens.

Australian Indigenous people are at greatest risk from 35 to 54 years of age. Three quarters of deaths are due to circulatory diseases, injury, cancer, respiratory and endocrine diseases, just as for other Australians, but among Indigenous Australians, death occurs at three to five times the national rate. Motor vehicle accidents were the most common cause of death from injury and they occur at four times the national rate (Cunningham and Paradies 2002).

About 7 percent of Indigenous deaths occur before the age of one year. This rate is eight times the rate of the general population. Major causes are low birth weight and respiratory disease.⁷

Table 2 - Life expectancies of minority groups ⁶

Life expectancy	Males	*Years of difference	Females	*Years of difference
Indigenous Australians	56.0	20.2	63.0	19.7
African Americans	66.1	7.6	74.2	5.2
Maori	67.2	8.5	71.6	9.2
Native American	67.6	6.3	74.7	5.9
Native Canadians	68.2	6.4	75.9	5.0
All Canadians	74.6	-	80.9	-
All Australians	76.2	-	82.7	-

* *“Years of difference” between a minority group and the total population of a country.*

Australian Indigenous death rates for men and women are higher than Maori death rates and much higher than Native American death rates. Dr Neil Thomson in Western Australian and Dr Ian Ring in Queensland, both medical doctors with lifetimes of work in Aboriginal health agree that the solution should be three-pronged:

- Provision of working health-hardware in communities (clean water and sewerage that functions),
- Establishment of effective public health programmes, and
- Implementation of significant measures, such as Treaties,

to raise the general status and sense of well-being of Indigenous Australians within the total Australian community. Treaties were signed in North America and New Zealand.

Although life expectancy of Australian Aborigines is similar to Pakistan, Indonesia, Guatemala and Iran, unlike these countries, low life expectancy in Australia is in the main the result of high early adult mortality (Cunningham and Paradies 2002).

Patterns of mortality among Indigenous Australians are markedly different to those of most other populations, with the exception of the Russian Federation. The age-specific mortality rates for Russian males in 1990–95 were almost identical to those of Australian Indigenous males in 1995–97. The similarities among females were less pronounced but closer than for any other country.

Russian life expectancy fell after 1990 as disempowered people were left in a collapsing centrally-controlled Soviet system. Low life expectancy was the result of economic and social instability, low employment, high tobacco and alcohol consumption, poor nutrition, stress and an inadequate health care system.

Similar factors affect Australian Aboriginal people. Paternalistic mission systems have been removed, there is stress due to the separation of children, trauma, grief, loss of culture, ongoing affects of poverty, discrimination and racism.

Alcoholism is a major problem in some communities, such as in North Queensland. Since 1982 when Canteens were introduced to fund essential government services, there has been devastation: 90 deaths from suicide, murder and violence alone occurred in one community of 900 people. This community had only three such deaths in the previous sixty years. The community has now banned from the Canteen any person with a history of substance-abuse. There is now also hard drug abuse in some Central Australian communities where such drugs were unknown twelve years ago. Nationally, however, non-Aboriginal people are nine times more likely to be imprisoned for drug-related offences than are Aboriginal people.

It now appears that in Russia life expectancy has risen after 1998, as people rebuilt their lives. Similarly, there is evidence from some communities that circumstances for Aboriginal people can improve

under the right conditions. There is the optimistic scenario that increased economic opportunities, with sympathetic support, can bring about rapid improvements in Australia. (Statisticians have suggested that we should aim for small wins that eventually add up.)

A better economic life for Australian Indigenous people will contribute to better health, and vice versa. Industries where there has been success include pastoralism, mining and cultural tourism.

Australian Pastoral Properties

During the past thirty years, pastoral properties, which were formerly owned by European Australians, have been returned to Indigenous groups.

Many of the poorer, more marginal lands were handed over or purchased from white pastoralists and vested in Aboriginal corporations. At least two stations in areas of rich country have also been vested in Aboriginal ownership.⁸

According to the Indigenous Land Corporation at least four indigenously owned properties are very successful. Successfully operated Aboriginal pastoral properties include Mistake Creek, Alcoota, Loves's Creek and Elsey in the Northern Territory. Apart from some CDEP funding, each of these operate without government assistance.

The ingredients for success, according to the Indigenous Land Corporation, are: sufficient land capacity, appropriate cattle resources, industry standard management, and the directors of the cattle enterprise and leadership of the community having corporate governance and management training. When all of these factors are present, local Indigenous people have developed the skills needed to run successful cattle operations. For businesses to work smoothly there is a need for strong leaders who can keep enterprises separate from developing community policies. It has been found that traditional uses of land ownership and land uses in a contemporary sense can be

effectively separated. The Miller report of some years ago, which made a case for skills and knowledge transfer, has not yet been implemented at many properties.

Cultural Tourism

In Canada, Aboriginal and non-Aboriginal Canadians have created “labours of love,” beginning with museums of anthropology in Vancouver, and the magnificent Museum of Civilization in Ottawa. Indigenous Houses of Learning are an intrinsic part of many of Canada’s universities, such as in British Columbia. There are also smaller scale cultural heritage projects and businesses.

Cultural tourism in Canada and Australia has operated well in niche markets where business expertise has been built up over time. Australia’s world class and world scale enterprises are Brambuk in western Victoria near the Grampians or Geriwerd National Park, and Tjapugai in Cairns in North Queensland.

There are many other successful projects. The ingredients for success in cultural tourism are multifaceted and described in *Travelling Aboriginal Australia: Discovery and Reconciliation* (Kauffman 2000).

Mining

The present situation of Australian Indigenous people and the mining industry are described in *Wik, Mining and Aborigines* (Kauffman 1998). In some of the best projects, Aboriginal employment ranges between 2 and 44 percent of the work force, and the total number of Indigenous people employed in these projects range from one to 250 persons. In both Canada and Australia, it has been found highly desirable to involve Indigenous people in partnership arrangements, and to have long-term training and employment agreements built into negotiated mining developments.

Canadian Business Operations Involving Aboriginal People

It is useful to consider the Canadian Aboriginal projects that were visited by eighteen Australian Indigenous leaders in 1997. Many of these educational and business projects operated by Indigenous people in North America made a dramatic impact on the Indigenous visitors from Australia.

Canadian Native Venture Capital Company

The Native Venture Capital Company (NVCC) was originally formed with the support of mining companies and government, to promote Aboriginal economic development. NVCC was originally funded by a group of twelve agencies. They were the Government of Alberta, Shell Oil, Gulf Oil, Esso, Royal Bank of Canada, a bulldozer/caterpillar company and six other companies.

The Native Venture Capital Company has generally funded simple businesses, where the task was to:

- get business;
- do business;
- get paid.

Particularly important funded projects have included pulp and saw-milling ventures with large customer bases. Hauling, blasting and drilling for mining have also been successful enterprises funded by NVCC. Almost all funded businesses had achieved profitability within 12 to 18 months.

A minimum of 3 Aboriginal people has been employed in each business initially. The NVCC has provided long-term employment viability. The NVCC requires at least two Directors on a Board, who are Aboriginal and contributing to the business. Jobs created have been both entrance level jobs and management jobs. The NVCC has invested in these businesses, then left the ventures to operate like normal businesses.

The NVCC has supported businesses which together have been one of the largest sources of non-government Aboriginal employment.

Mr Milt Pahl, President of the Native Venture Capital Company, a Canadian Aboriginal and former Government of Alberta Minister, has concluded that communities cannot run a business and that businesses operate best in a community, but not as part of a community.

By 1995, businesses supported by NVCC together comprised one of the largest sources of non-government Aboriginal employment in western Canada. In 1996 the Government of Alberta left the partnership. Their interest is now owned by the Sanson Indian band. The Company provides funds where Aboriginal people are contributing 51 percent or more of capital.

A minimum of C\$0.1m to C\$0.3m is required to start a business. The NVCC's largest project has involved a C\$0.75m company.

It was found that many companies had taken ten years to develop successfully and pay out the interest of the Native Venture Capital Company. Successful projects had included service contracts with Aboriginal Business Associations at Syncrude. Such developments were funded by the Native Venture Capital Company whose interest has since been bought out.

Cogema

Cogema (Canada) is a subsidiary of Cogema (France) and is dominant in the nuclear fuel industry. It operates a number of high quality mines in Saskatchewan Province.

It is a major world uranium miner which has been exploring since the 1960s. It has over 300,000 tonnes of uranium reserves, the largest at Cigar Lake, McArthur River and Baker Lake in northern Canada. Sales exceeded 9 billion Euro in 2001.

Cogema Resources is headquartered in Saskatoon, Saskatchewan. In 1997 the company employed 450 people, including 105 at Cluff Lake, 260 at McClean Lake and 20 for exploration activities. The company distributes detailed information on its operations and its Aboriginal policies. More than half of the site workers are from the northern part of the province, primarily of Aboriginal origin.

At some mines almost all equipment operators, mill operators and support services staff were Aboriginal and one third of supervisory and technical staff were Aboriginal. In total there were some 600 employees, and almost half are Aboriginal. By 2001, the company's major production sites were McArthur River, McClean Lake and Cluff Lake. The company employed 1,600 staff and contractors in Saskatchewan, more than half were from that province, and most of these were Aboriginal peoples. The Cogema company has positive tendering and employment policies for Aboriginal people.

Royalties are paid to bands if mining takes place on reserve land. They have an environmental monitoring committee with Aboriginal participants. The company also trains Aboriginal people in the bidding process for contracts. Joint ventures involving Aboriginal Communities are also encouraged. People are motivated towards education, because it is a means of obtaining jobs. The Company also funds small hospitals, scholarships and other programmes for Aboriginal communities (Kauffman 1997).

Cameco

Cameco operates and owns a controlling interest in the world's largest uranium mines and mills, located in northern Saskatchewan.

“Northerners,” or residents of the north, make up about half of mine site employees at Cameco and some 85% of these are Aboriginal people.

Cameco's head office is in Saskatchewan, and is the world's largest publicly traded uranium company. It produces 35 percent of the world's uranium, and is a growing gold producer. It operates on a "seven day in seven day out" programme. Principal mining operations are at Key Lake and Rabbit Lake in northern Saskatchewan. Native Title was negotiated between the Government and the bands during the late 1990s. Most of northern Saskatchewan is legally crown land, and most royalties go to the government.

The company has distributed detailed information on its operations and its Aboriginal policies. Chief Harry Cook, leader of the largest Cree Indian Band in Saskatchewan, is a member of the Cameco board of directors.

Saskatchewan First Nations have pursued jobs in the uranium industry, which provide significant employment opportunities. Northern Saskatchewan is scattered over 250,000 square kilometres, with a population of only 38,000 people.

There were approximately 500 aboriginal employees, representing about 50% of Cameco's site operations workforce, in 2000. This makes Cameco one of Canada's leading industrial employers of Aboriginal people.

Cameco's mining operations have been successfully woven into the social, political and cultural fabric of northern Saskatchewan and particularly into the more than 20 northern aboriginal communities where many of the employees reside. In addition to employment, Cameco also contributes to support northern Saskatchewan public and post-secondary education programmes. In 1999, Cameco invested more than a million dollars in post-secondary and training, scholarships, summer employment and career initiatives. All programmes were designed to encourage northern aboriginal children to stay in school, pursue post-secondary training, and consider occupations in the mining industry.

Pat Cardinal is a member of the Chipewan Band. He has a degree in education, was formally a school principal, and is currently head

of Northern Affairs for Cameco. Since 1982, Aboriginal groups have designed educational programmes to suit their communities in the Chipewean Band area. A majority of people who are educated as teachers move back to their communities. There is widespread Aboriginal interest in continuing education.

Aboriginal employment increased from 30 percent in 1989 to 40 percent of 700 employees by the late 1990s, in northern Saskatchewan. In addition, over half of the 300 contractors are usually Aboriginal.

Syncrude

Syncrude Canada Ltd. is the world's largest producer of crude oil from oil sands and the largest single source producer in Canada.

Syncrude is recognised as one of Canada's top 100 employers. Its operations provide jobs for 14,000 people directly and indirectly across Canada. It is one of the largest industrial employers of Aboriginal people. Aborigines make up 10 percent of the direct workforce and 13 percent of the employee/contractor workforce. In 2001, approximately C\$92 million was invested in Aboriginal contributions, businesses, employment, salaries and benefits.

Since its beginnings in 1973 the company recognised that local Aboriginal people have a significant stake in the responsible and successful development of the oil sands resources.

Syncrude's first president initiated a formal Native Development Programme and established an action plan. This addressed issues such as relocation assistance, housing, required education levels, target goals for employment, support services, and cultural awareness for supervisors.

Key services have been provided through the Aboriginal Development Steering Committee. This group includes leaders from throughout the organisation who ensure that Syncrude's commitments to Aboriginal development are achieved. This is accomplished by

establishing objectives to be included in corporate business strategies, then assisting management with education and communication to help achieve objectives. Turnover of some 600 Aboriginal workers in 1985 was reduced to 6 percent by 1997. It was found necessary to have a critical mass of Aboriginal employees. All mine employees have Year 12 certificate, and more than half of Aboriginal employees are at the top of their occupational ranks. It is necessary to have a degree and ten years of experience for management positions.

The Canadian Council for Aboriginal Business

The Canadian Council for Aboriginal Business in 2002 announced a focus on assisting businesses run by urban Aboriginal people. The two companies recognised with a gold award for commitment and leadership were Cameco Corporation in Saskatchewan and Syncrude in Fort McMurray, Alberta.

The programme is the first of its kind in the world and has already attracted interest from Aboriginal and business organisations in Australia, the United States and South America. A jury of eminent Aboriginal and non-Aboriginal business people examine each company's application.

The Canadian Council for Aboriginal Business (CCAB) is the country's leading organisation dedicated to promoting the full participation of Aboriginal communities in the Canadian economy.

CCAB's mission is to connect Aboriginal and non-Aboriginal people and companies with the opportunities they require to achieve personal and business success. CCAB is on the World Wide Web at www.ccab-canada.com.

Conclusions on Aboriginal Policies and Canadian Business

Canada has had a variety of mining agreements with Aboriginal peoples. Every agreement is different but for each of them the

process of forming the agreement is important. Relations between mining companies and Canadian Aboriginal peoples were poor before 1980, and there were few economic opportunities available to communities. But since then there has been dialogue and many positive agreements. It has been found that the most successful company relations should be informal and broadly based throughout the community. However, companies must communicate and visit communities, and provide business opportunities to Aboriginal peoples. They must also ensure that there is pre-entry level training for Aboriginal people, and that there is cross-cultural training provided to employees.

Mining companies have found that consultation with Aboriginal people is essential for certainty. It is also legally required, and is required under land claim agreements. This also makes good business sense. Community decisions are by consensus and ratified by a chief. Economic planning is vitally important to community survival, and can significantly assist health, education and the standard of living. It makes good business sense to involve Aboriginal people in a significant way. Quality training and education is an essential part of this development process.

New approach

The fact that Australian Indigenous people now have a life expectation that is as poor as for the Russian people in the 1990s is a pessimistic situation. There is, however, an optimistic scenario. There is evidence of positive changes in Russia, and that Russians are now living longer lives (Cunningham and Paradies 2002). OECD studies have found that good governance and economic opportunities for individuals can increase the wealth and wellbeing of people in finite periods of time.

A new approach in Australia is necessary. Early adult deaths of Australia's Indigenous people in many communities will not improve without significant change including a broadly based movement of

personal involvement by other Australians and concerned people. The policy in Australia for the first 170 years of settlement was mission management (Rowley 1972). In about 1972, that policy was changed to government management, which has been either direct, through appointment of officials and providing funding, or indirect management.⁹ For instance in 1980, Prime Minister Fraser and Minister Viner established an Aboriginal Development Commission which was subsumed first into the Aboriginal and Torres Strait Islander Commission in 1990, with an elected Indigenous Board and government providing over 95 percent of funds, and then into the Aboriginal and Torres Strait Islander Services Department in 2003. Around the world there is a move to smaller government, and in Australia many areas formerly managed by governments have now been privatised. It is beneficial for Indigenous people to become more involved in small and big businesses.

Contemporary Canadian and Australian government policies do have many similar approaches. Both governments proclaim that they are committed to renewing partnerships, strengthening Aboriginal governance, developing new fiscal relationships and supporting strong communities, people and economies.¹⁰

Indigenous Australia is a country of extremes. In one remote northern community of 3,000 people, there were 58 attempted suicides and 8 suicides in 1995.¹¹ Since then the Indigenous council, some helpful government staff and committed professionals have implemented effective public health programmes, a forestry project and an aquaculture project. With the use of highly experienced and skilled staff suicide has been reduced to just one in 2002. Their world-famous arts and crafts industry has been re-established. Other problems are being addressed.

Remote and urban communities with the right people and support have overcome their health and other problems, with a combination of preventative health programmes, economic projects, arts and cultural tourism businesses and sports programmes. The example of Russia, and of the personal reconstruction now occurring in some

Australian Indigenous communities, the cultural revivals, sporting achievements and new interest in business occurring among some Australian Indigenous communities give cause for hope.

Indigenous communities around Australia do have great needs, and do need people with special qualities and resilience to help them. In future more exchanges between countries such as Australia, Canada and New Zealand will provide benefits.

It will be of immense value if more ordinary Australians, and committed people from Canada, New Zealand and elsewhere, Indigenous and others, offer their support, their time and their expertise in a broad movement of practical and personal reconciliation.

A new approach which has occurred in some localities is personal reconciliation and economic development with partnership and active involvement of Aboriginal groups.

Such demonstrations of practical reconciliation may comprise sporting visits, advice on business plans, and inclusion of more Aboriginal people in the whole spectrum of Australia's cultural and economic life.

If one can afford to give one's time, the author Jackie Huggins and the former Minister Fred Chaney head up the privately funded Reconciliation Australia, an organisation now seeking donations and other help.¹² Australia can become a better nation when more of us learn and understand something about the complex Australian languages and of the people who are traditional owners of this country. By befriending even one Aboriginal person, we learn about our country and ourselves.

Canada has made treaties, its government has apologised for stolen children, the Aboriginal centres at Canada's universities provide a means of linking the past and future. Learning from Canada's success, the National Museum of Australia and the new Australian Institute of Aboriginal Studies can enlighten all of us.

If such idealism seems out-of-place in our economically rationalist times, one must also consider that economic development of the poorest 2.4 percent of Australians will also assist Australia's economic performance. Canada, Scandinavian countries and the United States have higher per capita incomes than Australia, and their Indigenous peoples enjoy considerably longer lives and higher socio-economic well-being indicators than Australia's.¹³

A wider ranging reconciliation movement in Australia, which includes greater Indigenous involvement in all governments, in education, in cultural programmes, and in small and big businesses, is required. It involves being a true friend of Australia's first people.

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Notes

¹ In September 2002, \$1,000 Canadian dollars were equivalent to \$1,203 Australian dollars (www.wespac.com.au). Sources: www.abs.gov.au, “Aboriginal and Torres Strait Islander Australia: A statistical profile from the 1996 Census” (Year Book Australia, 1999)(2034.0), ABS 1996 Census of Population and Housing: Indigenous Profile (2020.0), ABS 1996 Census of Population and Housing: Aboriginal and Torres Strait Islander People (2034.0-8), ABS Labour Force Australia (6203.0) (6287), ABS Australian Social Trends 2002 - Mortality (4102.0) - Education and Training (6227.0), Altman 2000 and OECD 2002 www.inac.gc.ca.

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⁵ www.oecd.org/ PISA 2001. Australian and Canadian performance of 15 year olds is considerably better than most European countries and the United States.

⁶ Cunningham and Paradies 2000, 2002, ABS (4704.0) 2001 and Paradies 2002.

⁷ ABS (4102.0) 2000 and 2002.

⁸ Delta Downs in Queensland and Roebuck Plains in Western Australia. Delta Downs, Roebuck and Myroodah, all Aboriginal-owned, can be considered successful but they are not really under Aboriginal control, as they are managed by specialist organisations.

⁹ Department of Aboriginal Affairs *Annual Reports 1972-1989*. Aboriginal Development Commission *Annual Reports 1980-1990*. Aboriginal and Torres Strait Islander Commission *Annual Reports 1990-2002*.

¹⁰ www.ainc-inac.gc.au and www.immi.gov.au Minister's Indigenous Affairs website.

¹¹ J.Hicks personal communication September 2002, and Tiwi Land Council *Annual Reports 1995- 2002*.

¹² See www.reconciliation.org.au

¹³ *Organisation of Economic Co-Operation and Development 2002. Statistics on Member Countries*. Paris. By using “Purchasing Power Parities” (PPP) Australia is ranked 11th of 30 countries. Australia’s per capita income is US \$3,900 behind Canada’s in \$US, which stands at US \$22,200, but it is only US \$1,800 behind Canada’s per capita income if one uses “PPP;” as cost of living for specified goods and services is higher in Canada than it is in Australia.

Constitutional Comparisons: Canadian Dimensions on Australia's Experience with Native Title

There are sharp distinctions between the constitutional experiences of Canada and Australia in relation to Indigenous peoples. They include, in the case of Canada, the history of treaty making; the Royal Proclamation of 1763; and, on confederation, the conferment on the national government of primary legislative responsibility. In 1982, the “repatriated” Constitution provided for protection of “existing aboriginal and treaty rights.” The Australian experience has been markedly different, and has provided little — and belated — recognition for the prior rights of the original inhabitants.

And yet the First Peoples themselves in the two countries have experienced similar legacies of dispossession and deculturation.

In recent years, there have been significant cross-references in the developing jurisprudence of the courts in the two nations. But the approaches of the national legislatures to resolving issues over the past three decades have, again, differed markedly.

Recognition of rights prior to the 19th century¹

Let me begin by going back to the times when what became the Nations of Canada and Australia were first being constituted.

A useful summary of the experience of British North America prior to US independence was provided in 1996 by Canada's Royal

Commission on Aboriginal Peoples. First contacts were traced back 1000 years, to visits by Norsemen from Iceland and Greenland:

Further intermittent commercial contacts ensued with other Europeans, as sailors of Basque, English, French and other nationalities came in search of natural resources such as timber, fish, furs, whale, walrus and polar bear...

Relations were established in a context in which Aboriginal peoples initially had the upper hand in population and in terms of their knowledge of the land and how to survive in it. These factors contributed to early patterns of co-operation and helped to overcome the colonial attitudes and pretensions the first European arrivals may originally have possessed...

The links between Aboriginal and non-Aboriginal societies in this initial period of contact were primarily commercial and only secondarily political and military (100-101).

Politically, each side tended to treat the other "as a political equal in most important respects" (102). Even until the late 1700s, Europeans did not outnumber the Indigenous peoples. During the 1700s, wars between the French and the British, in particular, placed a premium on securing military alliances with Indian nations.

The year 1763 was critical. In that year, New France fell to the British and was ceded to the Crown. The Crown issued its Royal Proclamation setting out what had become the basic tenets of British policy toward the Indian nations. What were those tenets? The Royal Commission wrote that:

Aboriginal/English relations had stabilised to the point where they could be seen to be grounded in two fundamental principles.

Under the first principle, Aboriginal peoples were generally recognised as autonomous political units capable of having treaty relations with the Crown...

A second principle emerged from British practice. This acknowledged that Aboriginal nations were entitled to the territories in their possession unless, or until, they ceded them away... (114).

Much of these two basic tenets was retained after the United States of America won independence from Britain, and received some judicial recognition in the US Supreme Court. But the immediate point is this: if British colonial policy had developed in this way in regard to North America, why did it not follow a similar development in Australia?

The critical times were close. The Royal Proclamation was issued in 1763. It was only five years later, in 1768, that the Admiralty issued its instructions to Lt James Cook for his first great voyage into the Pacific. A primary task was to observe the transit of Venus from Tahiti, and there were a number of other scientific dimensions to the voyage. The search for the Great South Land was almost an afterthought. If he should find it, his instructions set out two alternatives:

You are also *with the consent of the natives* to take possession of convenient situations in the country in the name of the King of Great Britain, or, if you find the country uninhabited take possession for His Majesty by setting up proper marks and inscriptions as first discoverers and possessors (Bennett and Castles 253-254, emphasis added).

This instruction is entirely consonant with the policy developed in relation to North America. However, when Cook sailed up the eastern coast of Australia in 1770, having some encounters with “natives,” he neither sought nor obtained their consent before proclaiming possession of “New South Wales,” then amounting to about half of the Australian continent, in the name of the Crown.

And when, 18 years later, the First Fleet sailed for Botany Bay, the commission issued to Governor Arthur Phillip said nothing about the rights of the natives, and authorised him to grant land to those who would “improve it,” without any reference to Aboriginal consent (Barton 481, 483, 485-486).

Had British policy changed so drastically in such a short period of time? It is clear that it had not when one refers to events after the 1770s. Historian Henry Reynolds referred to the North American experience and to British practice in Africa and the Pacific. He placed the instructions issued to Cook in the context of later consideration, by the House of Commons Committee on Transportation, of possible locations for a penal settlement. The Committee took it for granted that it would be necessary to have the agreement of the inhabitants. Britain wrote the principle into the Anglo-Spanish Convention of 1790 in relation to a possible settlement at Nootka Sound on the American northwest coast (Reynolds 51-52). Later still the principle was applied firmly in relation to New Zealand, culminating in the Treaty of Waitangi in 1840.

So why does the British settlement (invasion?) of the Australian colonies represent such an aberration from established policy and practice? Again, Reynolds sheds light on the critical factors which consisted largely of a series of assumptions:

First, in 1785, when the House of Commons Committee on Transportation examined Sir Joseph Banks, who had sailed with Cook in 1770, he was asked whether the Aborigines would be willing to bargain their consent to settlement. Banks thought not, as Reynolds notes:

The real problem wasn't that the Aborigines had nothing to sell. They were unwilling to sell because the Europeans had nothing to tender which would be considered of value, apart from provisions which in 1770 had been too valuable to part with (54).

Second, there was a belief that Australia was *literally* uninhabited, apart from a few scattered groups along the coast. This, too, appears to have derived from Banks' testimony. He reported that the people that he had encountered seemed to derive their sustenance from the sea, and lacked the arts of cultivation. It would follow that the interior could provide no food and would, therefore, be uninhabited. Reynolds commented: "It all would have been so easy if Banks had been right... But he wasn't" (32).

A third factor may have arisen from perceptions that Australian Aborigines were less "advanced" than other native peoples. In the hierarchy of land use, hunter-gatherers were regarded as being at a lower level than nomadic herders who were, themselves, considered to be more "backward" than cultivators, let alone those peoples (such as Europeans) who had developed commercial societies. There was a tradition among scholars, such as Henry Home, John Locke, Sir William Blackstone and Emerich de Vattel, which denied that the use of land by hunter-gatherers and herders merited recognition as property interests.

Whatever the reasons, - and in stark contrast with the "two fundamental principles" referred to by Canada's Royal Commission on Aboriginal peoples - the fact was that colonisation of Australia proceeded on the basis of non-recognition of the rights of Aboriginal peoples and Torres Strait Islanders. There was no Indigenous consent to the assertion of British sovereignty, and such consent has still not been given. And there was no recognition of territorial rights, though that situation has changed over recent times.

Developments in the 19th Century

In the United States, the "Marshall cases" in the 1820s and 1830s² seemed to provide judicial underpinning to the legal principles that had emerged after some two centuries of settlement from Britain. Indeed, the Constitution itself appeared to recognise the political status of Indian nations (Art 1, s. 8 (3)), and the Supreme Court

has acknowledged that they enjoy a continuing, if subordinate, sovereignty.

Canadian jurisprudence, too, built on the earlier “tenets,” and also on the Royal Proclamation of 1763. Canada’s recognition of territorial rights also built on the history of treaty making which has continued to the present day.

In both Canada and the USA, the nineteenth century witnessed some erosion of Indian rights which clearly related to changes in the power balance between settlers and the Indigenous peoples, and the growing pressure on Indian lands. Similar pressures developed in Australia.

But, in contrast to North America, there was no recognition of Aboriginal political or territorial rights in Australia. In regard to territorial rights, the best that the British Government and the several colonial governments were able to achieve as the 19th century progressed was the establishment of a number of “reserves” for Aboriginal peoples, and some provision that the vast pastoral leases granted for running cattle and sheep should not displace Aboriginal uses of the land and its resources.³ But as far as jurisprudence was concerned, on several occasions Australian courts and even the Judicial Committee of the Privy Council⁴ declared that, on the settlement of the Australian colonies, the Crown acquired not only sovereignty but also the full beneficial ownership of all the land, which it was then free to grant to settlers.

Another contrast between the two continents occurs at the Constitutional level. With confederation in 1867, the national parliament in Canada was given primary responsibility for Indians and land reserved for Indians, just as the United States Constitution conferred primary power on Congress. By contrast, the Commonwealth of Australia Constitution Act, 1900, expressly *denied* to the national parliament power to pass laws for Aborigines. It took a referendum in 1967 for the Constitution, s. 51 (xxvi) to be amended to give the national parliament a concurrent (but not exclusive) legislative power for Aboriginal people. And there has been a distinct

tendency in the politics of Australian federalism for the national government to hesitate before over-riding State governments on matters of “land management” and Indigenous issues generally.

There are no provisions in the Commonwealth Constitution which specifically recognise and protect Indigenous rights in Australia. The High Court has considered an argument that the “race power” of the Commonwealth Parliament (s. 51(xxvi)) authorises only the enactment of laws for the benefit of Indigenous Australians and not to their detriment. The majority decision in the *Hindmarsh Island Bridge Case* was that no such restriction applied to the power of the Parliament to repeal, in whole or in part, statutory rights previously conferred by the Parliament.⁵ Whether the suggested limitation applies to legislation which reduces common law rights remains to be decided.

The one provision in the Constitution which appears to offer some protection for Indigenous rights is the “acquisitions power” (s.51(xxxii)) insofar as it requires “just terms” for any Commonwealth law with respect to the acquisition of property. *The Native Title Act 1993* (Cth), therefore, makes extensive provision for compensation with regard to acts which affect native title.

Recognition of the Territorial Rights of Indigenous Australians.

The 1960s was a critical period in Australian developments. As noted, the long political struggle to amend Constitution s. 51 (xxvi) finally achieved success in the referendum of 1967. But the Constitution had always conferred on the Commonwealth Parliament plenary power to legislate for territories. Aboriginal peoples in the vast Northern Territory launched two major campaigns for recognition of their land rights during the 1960s. These campaigns won significant support among non-Indigenous Australians.

One campaign was waged by the Gurindji people. In August 1966, led by Vincent Lingiari, they walked off the Wave Hill cattle station in protest at working and living conditions. They moved to Wattie Creek (Daguragu) in what became a seven-year struggle for return of their lands. That struggle remained a political struggle, and was ultimately successful.⁶

Elsewhere in the Northern Territory, the Commonwealth Government had granted a lease for extensive bauxite mining at the Gove Peninsula. The Yolgnu peoples protested that the land was theirs and that they had not been consulted. They, too, tried to win through political means, including the sending of a famous “bark petition” to Parliament. But eventually they brought legal proceedings before a single judge of the Supreme Court of the Northern Territory. It is at this point that we can commence discussing the modern “trade” of experience between Canada and Australia.

Canadian–Australian Exchanges

Justice Blackburn eventually delivered a learned judgment of over 150 pages.⁷ He acknowledged that the Yolgnu clans had a system of law, but felt bound by the precedents to conclude that “the doctrine [of native title] does not form, and never has formed, part of the law of any part of Australia.” He placed some reliance on Canadian judgments, in particular, decisions of the courts of British Columbia on the claim to aboriginal title brought by the Nisga’a people in *Calder v Attorney-General of British Columbia*.⁸

But, of course, the Nisga’a litigation went on to the Supreme Court of Canada where their Lordships took a very different view of the law from that taken in the lower courts. As to Blackburn J’s judgment, some of his propositions were described in the Supreme Court as being “wholly wrong.”⁹

The initial response to the failure of litigation in Australia occurred at the political-legislative level. The Whitlam Government which

took office in 1972 appointed Edward Woodward QC (who had been senior counsel for the plaintiffs in the *Gove* case) to conduct an inquiry and to report on how best to recognise Aboriginal land rights in the Northern Territory. Legislation based on Woodward's recommendations was finally enacted by the Commonwealth parliament under the Fraser Government as the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). Under that Act close to half the land mass of the territory has been returned to Aboriginal ownership under Australian law, or is subject to a Native Title claim, although a significant proportion of that territory is extremely harsh, arid terrain.

Land rights legislation was also enacted in most of the States (with notable variations among them). As at February 1994, (before native title determinations began to become significant) some 14.25% of Australia was held by Indigenous Australians under legislation vesting freehold or leasehold titles, or occupied as Aboriginal or Torres Strait Islander reserves. Figures as at 2003 put the percentage at 15.43%.¹⁰

In the meantime, work began on gaining a higher level reassessment of Australian common law and of the correctness of the *Gove* decision. This process benefited immensely from increasing exchanges between Canadian and Australian lawyers. Some of those exchanges occurred through visits by Indigenous leaders and legal scholars. Canadian aboriginal leaders and scholars played an important part at a 1980 Symposium on Aboriginal Land Rights held by the Australian Institute of Aboriginal and Torres Strait Islander Studies.¹¹ Professor Brad Morse from the University of Ottawa visited the University of NSW in 1982-83. From this base he travelled widely and provided valuable perspectives on the way that Australian law had been perceived.

In the latter part of 1981, following an influential conference at Townsville, work began on a challenge to the correctness of the *Gove* decision. The case was brought by the Meriam people from the Torres Strait, which lies between the northern tip of Queensland and Papua New Guinea. This litigation was initiated in the High Court

of Australia and culminated in what became known as the *Mabo* decision of 1992.¹²

The lawyers conducting that litigation in Australia had useful exchanges of information and ideas with the lawyers running the Gitskan-Wet'su'weten litigation in British Columbia – the *Delgamuukw* case. Ultimately, as I understand it, argument before the BC Court of Appeal was re-opened specifically to permit submissions based on the *Mabo* judgments. And, of course, when the litigation went on appeal, the Supreme Court of Canada finally had some high-level jurisprudence from Australia available for its own consideration.

(It should, however, be made clear that the *Mabo* decision is not without its problems relating, particularly, to the matter of extinguishment of native title. I shall refer below to one commentator from Canada, Professor Kent McNeil, who has developed some important and influential critiques of the emerging Australian jurisprudence.)

The Mabo decision

The judgments occupy some 217 pages of the Commonwealth Law Reports, so let me provide a very simple summary. The “lead” judgment is usually considered to be that of Justice Brennan, with which Mason CJ and McHugh J concurred. Justices Deane and Gaudron delivered a separate joint opinion. Justice Toohey gave a separate judgment. Only Dawson J dissented. There are significant differences among the judgments which otherwise held, 6:1, that the native title rights of the Meriam peoples had survived the extension of British sovereignty over their islands.

The majority was able to recognise the possible survival of native title, without disturbing two centuries of land grants, by drawing substantially on jurisprudence from the courts of the USA, Canada and other lands colonised by the British.

The Court held that native title might be lost if the peoples concerned no longer retained their connection to the land in terms of their traditional laws and customs. Native title might be surrendered to the Crown, but was otherwise inalienable outside the laws of the particular peoples. In particular, native title might be “extinguished” by action of the Crown in granting interests to others, or by appropriating land for public purposes, to the extent that such grants and appropriations were inconsistent with the continued exercise and enjoyment of native title rights and interests.

The High Court also held, by a 4:3 majority, that extinguishment of native title, as such, would not give rise to any entitlement to compensation.

Native title, on these terms, was highly vulnerable. State and Territory governments could have proceeded, as they had in the past, to grant interests in land, or to allocate land to public purposes, without any need even to inquire whether native title rights might have survived.

The only check on their power to do so was Commonwealth legislation enacted when Australia ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) – the *Racial Discrimination Act 1975* (Cth) (the RDA). The RDA had been critical to the progress of the Mabo case itself when, in 1985, the Queensland parliament legislated to retroactively extinguish any native title that might have survived in the Torres Strait. In 1988 the High Court held, 4:3, that the Queensland Act was invalid for inconsistency with the RDA.¹³

The initial response to the *Mabo* (No. 2) decision in 1992 was muted. Mining companies asked their lawyers to advise whether the decision presented them with problems. Eventually, when the lawyers did advise that there might be problems, the mining industry launched a major campaign hostile to the newly discovered native title. (The mining industry had, in previous years, expressed similar antipathy to land rights legislation which gave Indigenous Australians any significant control over resource development on their lands.)

What were the problems detected by the lawyers? One was the possibility that any mining leases or exploration licences granted since the commencement of the RDA in 1975 might be invalid. Under general Australian law (with some exceptions), minerals are owned by the Crown, and governments are able to authorise prospecting and extraction even over privately owned or leased lands, subject only to the titleholder being notified and having an opportunity to object, plus an entitlement to be compensated for disturbance. The RDA required equal treatment for native title holders. But native title holders had not been given notice, or an opportunity to object, or compensation when mining interests had been granted over their lands. Arguably, many mining interests granted by governments since 1975 were invalid.

In the heady debates that ran from the latter part of 1992 through 1993, some of the more excitable mining industry leaders and politicians called for the legislative overturning of the *Mabo* decision, or for the extinguishment of native title, or for the repeal of the RDA. Eventually, a less drastic solution to their concerns emerged in the form of a proposal that there should be legislative validation of “past acts” of governments that would be invalid because of the existence of native title. Because such a validation would entail some rolling back of the consequences of the RDA, the necessary legislation had to be Commonwealth legislation.

The Native Title Act

The *Native Title Act* 1993 (Cth) (the NTA) commenced operation on 1 January 1994. It had four principal objectives:

1. To recognise and protect native title.
2. To provide for the validation of “past acts” of governments between 1975-1993 which might affect native title.
3. To provide, in respect of “future acts,” that native title should generally be accorded the same respect as freehold titles. In

addition, in respect of proposals for mining on native title land, native title holders should have an additional “right to negotiate.”

4. To provide processes for the determination of native title and/or compensation, involving a new National Native Title Tribunal (the NNTT) and the Federal Court.

On this last point, the Act followed the practice under some Australian land rights legislation of establishing a quasi-judicial process, through courts and tribunals, for determining claims to native title.

Aboriginal people were familiar with the different path taken by the Canadian Government, after the *Calder* case, of attempting to resolve such matters by negotiated agreements, and insisted that the Australian legislation should make provision for local and regional agreements. One of the few positive aspects of 1998 amendments to the legislation under the Howard Government, and one of the few points at which the Government proceeded in accordance with Indigenous proposals, was enhanced provision for Indigenous Land Use Agreements (ILUAs). (I shall return to other aspects of the 1998 amendments.)

Three High Court decisions in 2002¹⁴ have produced responses on behalf of numbers of Indigenous Australians that native title law has become too technical, complex and unrewarding to them, and that some other approach needs to be considered. It is worth noting that South Australia has embarked on attempting to develop a State-wide ILUA which, presumably, may eventually bear some resemblance to the sorts of comprehensive land agreements (treaties) that Canada has been negotiating in the years since the *Calder* decision.

Natural Resources

Australia, like Canada, derives much of its wealth from the development of natural resources, and the mining industry is

highly significant in the economy generally and, in particular, in the economies of Western Australia, the Northern Territory and Queensland. Because mining is seen as so economically significant, it is also politically significant. This has been a factor which has greatly complicated the work of recognising Indigenous ownership of land.

The path-breaking *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) followed recommendations from Edward Woodward QC in giving Aboriginal owners effective control over mining on their lands. Woodward had reported: “I believe that to deny to Aborigines the right to prevent mining on their land is to deny the reality of their land rights” (*Aboriginal Land Rights Commission* para 568). Land rights legislation in some other parts of Australia has also given Indigenous Australians some say over mining on their lands.

Mining companies and pro-development politicians have been unenthusiastic about having to deal with Aboriginal peoples on such projects. One of the key elements in the bitter national debate that followed the *Mabo* decision was resistance to the idea of effective controls over mining and other resource developments on Indigenous land.

In the event, the original *Native Title Act 1993* (Cth) laid down a regime for “future acts” which required that native title holders would have exactly the same rights as the holders of “ordinary title” (freehold, in most places). In addition, where mining was proposed (or compulsory acquisition for the benefit of a third party) the Act gave native title holders an additional, but time-limited “right to negotiate.” If agreement was not achieved, the matter would be determined by the NNTT. In the last resort, it might be determined by a Minister.

One of the major elements in the 1998 amendments to the Act was to greatly reduce this “right to negotiate” (RTN). Entire categories of lands were exempted from the RTN, and, in some situations, States and Territories were authorised to substitute reduced procedural rights. A stiff, and retrospective, registration test was imposed on native

title claimants as a prerequisite to the RTN being available at all. Other features of the 1998 amendments included a further round of validation of “intermediate period acts” by governments which had chosen not to follow NTA requirements in their dealings with land; and an extraordinary provision authorising States and Territories to legislate to “confirm” the past extinguishment of native title as a result of past grants of interests in land which are deemed to have conferred a right of exclusive possession.¹⁵

It is these aspects of the 1998 amendments which caught the attention of international human rights committees over several years.

International Standards

Many of the generally applicable human rights treaties are important to Indigenous peoples. In addition, there is developing a series of standards directed specifically to the rights and aspirations of Indigenous peoples.¹⁶

But the processes that have been triggered over the past few years in relation to Australia have been those established under three generally applicable treaties which Australia has ratified. These and other “core” human rights treaties establish committees of independent experts for the purpose of monitoring State party compliance with treaty standards. (First Nations people in Canada have made significant use of these committees.)

The Committee on the Elimination of Racial Discrimination (CERD) is established under the Race Discrimination Convention (ICERD). It learned of the 1998 amendments to the NTA soon after they were enacted and, in August 1998, activated its urgent action/early warning procedure to seek information from the Australian Government.¹⁷ Australia responded. The Aboriginal and Torres Strait Islander Commission (ATSIC – the peak, elected Indigenous body) and other bodies also sent submissions. In March 1999 CERD published its decision that the amendments violated Australia’s obligations under

the Convention in four particular respects including “restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses.”¹⁸ The Government responded on 5 July to the effect that it “notes the views of the Committee, but does not agree with them.”¹⁹ On 16 August CERD reaffirmed its earlier decision and decided to continue consideration of the matter in March 2000 when it was due to consider Australia’s Tenth, Eleventh and Twelfth Periodic Reports.²⁰

On 24 March 2000 CERD published its concluding observations on Australia’s periodic reports. They covered a range of matters. On the particular issue of resource developments on native title land, the committee expressed its concern about the devolution to States and Territories of legislative power to further reduce protections of the rights of native title claimants available under the Commonwealth legislation. The committee described the Government’s response to its earlier decision as unsatisfactory, reaffirmed those decisions, and reiterated its recommendation “that the State party should ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5(c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of securing the “informed consent” of indigenous peoples.”²¹

In July 2000 Australia’s third and fourth periodic reports under the International Covenant on Civil and Political Rights (ICCPR) were considered by the Human Rights Committee. Among a range of matters considered, the committee said that the “State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision making over their traditional lands and natural resources (article 1, para 2).” It expressed concern that the 1998 amendments to the NTA “in some respects limits the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use . . .” It recommended that Australia “take further steps in

order to secure the rights of its indigenous population under article 27 of the Covenant” including by a reconsideration of the legislation.²²

On 1 September 2000 the Committee on Economic, Social and Cultural Rights published its concluding observations on Australia’s third periodic report under the International Covenant on Economic, Social and Cultural Rights. In terms of the language of the Covenant, the committee had less scope than the other committees for considering native title issues. But it did note “with regret that the amendments of the 1993 Native Title Act have affected the reconciliation process between the State party and the indigenous populations who view these amendments as regressive.”²³

The Australian Government’s response to the critical comments from CERD and the Human Rights Committee in particular has been to condemn the operation of the treaty committee system and to propose substantial reform.²⁴

Evolving Australian Jurisprudence on Natural Resources

In the meantime, Australian courts have been developing a jurisprudence of native title, both at common law, and within the particular context of the Native Title legislation.

Canadian scholar, Professor Kent McNeil, has written a number of very cogent critiques of aspects of the emerging Australian law, especially in relation to the excessive readiness to conclude that there has been some extinguishment of native title.²⁵ On certain issues, Australian courts are drawing on the Canadian jurisprudence, though there are also cases where judges have declined to follow overseas jurisprudence.²⁶

On the particular matter of natural resources on Indigenous land, the High Court of Australia, in August 2002, handed down its decision in one of the key cases – *Western Australia v. Ward* (the *Miriwung Gajerrong* case)²⁷ in which (among other things) it held that the applicants had not proved traditional rights in respect of minerals

and petroleum, and that, even if they had, any such rights had been extinguished by legislation vesting ownership in the Crown. Another case in which the High Court has considered natural resources, in denying exclusive fishing rights, is the *Croker Island Case* concerning native title rights offshore.²⁸ These results contrast with Canadian experience where some First Nations have prospered from the ownership of subsoil resources, and where some have benefited from recognition of fishing rights.

On such issues there remains potential for Australian law to benefit from the more mature experience of Canada. I would like to believe that the evolving Australian jurisprudence will prove to be of sufficient quality to merit some reciprocal trade in the other direction. But, for the moment, I have to suspend judgment as to whether this is a likely development.

Conclusion

I have largely focussed on the matter of Indigenous territorial rights where Canadian developments have been of great assistance to Australia in departing from the two-century-old tradition of denial. While we appear to be floundering in relation to the recent discovery of native title, Australia has also made progress through statutory land rights schemes, and also through provisions for funding of open market purchase of lands for Aboriginal peoples and Torres Strait Islanders.

Canada remains well ahead of Australia in relation to Indigenous political rights. There has been a recurring debate in Australia about a possible Treaty. Such a Treaty (or treaties) could provide, belatedly, “the consent of the natives” to non-Indigenous settlement, and, thus, complete the “constituting” of the nation. Such a document might also address other items of “unfinished business” affecting Indigenous Australians.

There have been some useful Australian developments in regard to “self-government,” especially at the community level, and in regard to Indigenous participation in decisions affecting them. And there are increasing numbers of agreements being negotiated on a range of issues.

In relation to Indigenous political rights, the evolution of the Canadian territory of Nunavut, and self-government provisions in a number of other treaties, such as the Nisga’a Treaty in British Columbia, offer valuable lessons to Australia.

Both countries have a long way to go in other areas of Indigenous rights and aspirations, in particular, in redressing the considerable socio-economic disadvantage experienced by so many Indigenous people. Continuing dialogue between our nations, at all levels, has the potential to contribute significantly to the development of responses which are appropriate and effective.

In spite of the marked differences between our respective legal histories and constitutional arrangements, we have much to learn from each other’s successes – and failures.

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Notes

¹ The discussion draws partly on a paper published as Chapter 20 in Sampford and Round. It also draws partly on a paper presented at the meeting in Ottawa in October 2000 of the Canadian Indigenous Bar Association.

² *Johnson and Graham's Lessee v M'Intosh* 21 US (8 Wheat) 543 (1823); *Cherokee Nation v Georgia* 30 US (5 Pet) 1 (1831); *Worcester v State of Georgia* 31 US (6 Pet) 530 (1832).

³ *The Wik Peoples v Queensland* (1996) 187 CLR 1.

⁴ *Cooper v Stuart* (1889) 14 App Cas 286.

⁵ *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

⁶ The story was recounted in 1996 by the Governor-General, Sir William Deane, in the Inaugural Vincent Lingiari Memorial Lecture, *Some Signposts from Daguragu*.

⁷ *Milirrpum v Nabalco Pty Ltd (The Gove Land Rights Case)* (1971) 17 FLR 141.

⁸ (1969) 8 DLR (3d) 59; (1970) DLR (3d) 64.

⁹ (1973) 34 DLR (3d) 145 at 218 (Hall J, Laskin and Spence JJ concurring).

¹⁰ For details of statutory land rights regimes, see McRae, Nettheim and Beacroft, Chapter 4.

¹¹ The proceedings were published as *Aborigines, Land and Land Rights* (Peterson and Langton eds), and contain chapters by Noel Dyke, Harvey Feit and Constance Hunt.

¹² *Mabo v Queensland (Mabo No. 2)* (1992) 175 CLR 1.

¹³ *Mabo v Queensland (Mabo No. 1)* (1988) 166 CLR 186. See also, *Western Australia v Commonwealth* (1995) 183 CLR 373.

¹⁴ *WA v Ward* [2002] HCA 28; *Wilson v Anderson* [2002] HCA 29; *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58.

¹⁵ I have given an overview of the extraordinarily long and complex 1998 amendments in G Nettheim, "The Search for Certainty and the Native Title Amendment Act 1998 (Cth)," *The University of New South Wales Law Journal* 22 (1999): 564.

¹⁶ For an overview, see Pritchard and Heindow-Dolman.

¹⁷ Committee on the Elimination of Racial Discrimination. (CERD) /C/53/Misc.17/Rev 2 (11 August 1998); reproduced in *Australian Indigenous Law Reporter* 3, 4 (1998): 590.

¹⁸ CERD/C/54/Misc. 40/Rev 2 (18 March 1999); reproduced in *Australian Indigenous Law Reporter* 4, 2 (1999): 140.

¹⁹ See *Australian Indigenous Law Reporter* 4, 4, (1999): 143.

²⁰ CERD/C/55/Misc.31/Rev 3 (16 August 1999); reproduced in *Australian Indigenous Law Reporter* 4, 4 (1999): 148. The periodic reports had been due in 1994, 1996 and 1998 respectively.

²¹ CERD/C/56/Misc.42/Rev 3 (24 March 2000).

²² CCPR/CO/69/AUS.

²³ E/C.12/1/Add.50 (1 September 2000).

²⁴ For a recent survey of these developments, see Marks.

²⁵ For example, “Racial Discrimination and the Unilateral Extinguishment of Native Title” *Australian Indigenous Law Reporter* 1, 2, (1996): 181; “Extinguishment of Native Title: The High Court and American Law,” *Australian Indigenous Law Reporter* 2, 3, (1997):365. These two articles are reproduced in Kent McNeil, *Emerging Justice? Essays on Indigenous Rights in Canada and Australia*, (Native Law Centre, University of Saskatchewan, 2001) 357 and 409, respectively, together with a third paper on Australia, “The Relevance of Traditional Laws and Customs to the Existence and Content of Native Title at Common Law” at 417.

²⁶ *Fejo and Mills v Northern Territory* (1998) 195 CLR 96.

²⁷ [2002] HCA 28.

²⁸ *Yarmirr v Northern Territory* (1998) 156 ALR 370; *Commonwealth v Yarmirr* (1999) 168 ALR 426.

From Unorganised Interests to Nations Within: Changing Conceptions of Indigenous Issues in Australia and Canada

This paper reviews the work of Canadian political scientist, Sally Weaver, who in the early 1980s analysed Indigenous affairs policy making over the previous fifteen years in both Canada and Australia in terms of unorganised Indigenous interests and how governments had sought to deal with them. It also identifies a second theme within Weaver's work relating to the re-conceptualisation of Indigenous interests as nations within, rather than just pressure groups of an ethnic minority. Weaver labelled this conceptual change a paradigm shift, and this paper accepts and uses that terminology. Having reviewed Weaver's work, the paper attempts, in its final section, to clarify and contextualise two of Weaver's claims about this paradigm shift: its inevitability and the outmoded nature of old paradigm analysis.

Unorganised Interests

Canadian political scientist, Sally Weaver, undertook two very useful studies of Indigenous affairs policy making in Canada and Australia from the late 1960s to the late 1970s. The Canadian study focussed on the making of a 1969 government White Paper on Indian policy, and on political developments in its aftermath (1981). The Australian study focused on the establishment in 1973 of an Australia-wide, government-sponsored, elected Indigenous body, the National Aboriginal Consultative Committee (NACC), and its subsequent reform in 1976/77 into the National Aboriginal

Conference (NAC) (1983). Weaver also brought the two cases together under the rubric of comparative “struggles of the nation-state to define Aboriginal ethnicity” (1984).

One of the themes to emerge from Weaver’s work was that Indigenous interests had been largely unorganised in both Canada and Australia up until the time of these policy-making efforts and that one of their products, in Canada, or purposes, in Australia, was to organise Indigenous interests.

In Canada, the proposed equal rights and termination approach of the White Paper galvanised Indian bodies into united political action as never before, giving the National Indian Brotherhood (NIB) a coherence and public profile it had never before enjoyed. During the preparation of the White Paper, Weaver writes, the NIB was:

more a hope than a reality. It was a federation of the provincial organisations, but these associations, although more advanced than the NIB, were still in the developing stage and struggling for funding (1981, 43).

With the publication of the White Paper and the policy reversal process back towards the affirmation of Indigenous-specific rights which followed, the NIB became the Indian body which the Canadian government could not afford to ignore. It was even given the prize of a joint policy-making committee with Cabinet ministers from early 1975.

In Australia, Weaver argued, the NACC was an attempt by the government:

to convert Aboriginal pressure group behaviour from an issue oriented mode to a more stabilised form. A successful conversion would regularise the relationship between Aboriginals and the federal government, strengthen the Aboriginal organisational base, open direct access to the minister, and allow the new body to

deal with a broad range of issues in an on-going fashion (1983, 5).

This attempt failed, in Weaver's judgement, leading to only one elected three-year term for the NACC. Elected NACC members included experienced Aboriginal activists of the previous few years, often from urban areas, who continued their confrontational styles of relating to government by challenging the constitution and prescribed role of the NACC.

The second attempt by the Australian government to convert Aboriginal pressure group behaviour to a more stabilised form, the NAC, lasted for two electoral terms of four years each. However, both NACs were, in Weaver's judgement, also essentially failures. At the time of Weaver's first Australian study in 1980, she observed that the first NAC, elected in 1977, was a far more conservative body than the NACC and that it had:

yet to develop a public presence, either by articulating issues of Aboriginal concern to the public and the government, or by developing a newsletter (1983 pt II, 104).

In a second study, published ten years later, Weaver observed that the second NAC, elected in 1981, had:

recruited a few younger, more politically sensitive members who began to speak out more critically on Aboriginal issues (1983, 57).

She also observed that the second NAC was given additional resources and an opportunity for "self-reform" by an incoming Labor Commonwealth government in early 1983, but that it failed to capitalise on this more responsive policy environment. The second NAC experienced an outbreak of geographically-based factionalism which meant that it could not develop a unified position on self-reform. The additional resources, Weaver argued, "deflected attention from serious self-appraisal" and became themselves the "focus of attention" which, through mismanagement, later became the

“rationale for escalating ministerial and bureaucratic control” over the NAC (Weaver 1993, 69). The final fatal problem was the Labor government’s back-down on its central Indigenous affairs policy of a uniform, nationwide system of land rights which, Weaver argued, meant that the NAC:

could not use land rights policy as an issue on which to develop organisational solidarity, nor could the NAC provide policy legitimation on land rights, as the minister sought (1993, 70)

The NAC had its resources withdrawn by the government early in 1985 and elections for a third term were never called.

Weaver analysed the failings of the NAC and the NACC in terms of western democratic governments experimenting with two different types of:

mechanisms for obtaining policy advice on a more permanent basis from their politically unorganised indigenous minorities at the national level..... government-structured advisory bodies.... and the more innovative method of government-funded but native-organised pressure groups (1983 pt II, 106).

Weaver’s preference was for mechanisms of the second variety, which were also well resourced, and of her preferred model she wrote:

If governments wish advice they deem useful from unorganized and disadvantaged minorities such as Aboriginals, they must provide some political resources to enhance the ability of Aboriginals to organize and bring forward reasoned and representative advice..... inadequate resources will limit an organization’s capacity to define its members’ common interests for articulation to government and the public (1983 pt II, 107).

To reduce these experimental mechanisms to government advisory bodies, or to under-resourced pressure groups was, Weaver argued, to

risk them failing “to gain legitimacy from their own constituency” or producing bodies in which neither the government nor the Aboriginals had confidence (1983 pt II, 107). In her first study of the NACC and NAC, Weaver concluded that:

Government efforts to foster Aboriginal organisations like the NACC and NAC can be successful only if a policy of *Aboriginal political development* is explicitly adopted (1983 pt II, 107, emphasis in original).

In her second study of the NAC, Weaver concluded that:

Ultimately, self-determination for Aboriginal organisations is in the best interests of the nation-state, for bodies that lack Aboriginal legitimacy also lack the ability to legitimate government policies, a process required in democratic political systems (1993, 71)

I will return to Weaver’s analysis and the Australian experiments in a moment. But first let me note the similar line of argument she ran in relation to the Joint Cabinet–NIB Committee which emerged in Canada in early 1975. Weaver wrote:

Initially both the government and the NIB were cautiously optimistic about the prospects of the Joint Cabinet–NIB Committee. The link between NIB and the cabinet was a unique structure for the federal government, and there was hope that it would optimize the chances of developing mutually acceptable policies. However, by winter 1978, relations within the joint committee deteriorated. The government perceived the joint committee as an “advisory” body, whereas the NIB understood that it would be a “negotiating” forum; the NIB resented the limited powers it felt it had in the arrangement, as well as the continued reluctance of the government to declare its views to Indian participants; the government, in turn, found many of the NIB demands unreasonable and unrealistic (1981, 203).

The NIB pulled out of the Joint Committee in April 1978, without mutually acceptable policies having been developed and with this difference of perspective over the Committee's role still unresolved (see also Weaver 1982). Weaver clearly believed that for this experiment too to be successful, the Committee's role had to be far more than that of a government advisory body. The Aboriginal pressure group had to be given adequate resources and allowed a full head of steam.

In the late 1980s the Australian government developed a third experimental attempt at a nationally-elected Indigenous body; the Aboriginal and Torres Strait Islander Commission (ATSIC). In Weaver's terms, this third experiment was certainly not a "government-funded but native organised pressure group," but neither was it just a "government-structured advisory body." In the name of self-determination/self-management and public accountability, ATSIC attempted to share executive power over Commonwealth government Indigenous-specific programs and Indigenous affairs policy advice between elected Indigenous people and the Commonwealth minister (Sanders 1994). It aimed to bring Indigenous people into the decision-making heart of government, rather than keeping them on the advisory periphery.

ATSIC has now been in existence thirteen years, six under the Labor Commonwealth government which created it and seven under a Coalition Commonwealth government which, when in opposition, opposed its creation. ATSIC has now had five rounds of elections for Indigenous representatives for three-year terms, the latest being in late 2002. These elections attract of the order of 1,000 Indigenous candidates and 50,000 Indigenous voters. So there is considerable interest among Indigenous people in being involved in ATSIC.

Early on in its history, ATSIC was criticised by some Indigenous people as being just another Commonwealth bureaucracy; and the maintenance of ATSIC employees as Commonwealth public servants, even to the present, has given this argument some ongoing credence. However ATSIC worked hard during the 1990s to develop a sense

of independence from the Commonwealth government, lining up with the Indigenous land councils rather than the Commonwealth in negotiations over native title policy in 1993 and 1997/8 and also in the mid-1990s applying for and gaining official non-government organisation status with the United Nations. Further, ATSIC's chairperson became elected rather than appointed after the fourth round of elections at the end of 1999 and has since taken on a quite prominent and independent public profile.

The inaugural elected ATSIC chairperson, Geoff Clark, called regularly, during his first term, for discussion of the possibility of a treaty between Indigenous and other Australians despite disinterest in this idea from the current Coalition Commonwealth government. Clark and the other elected commissioners from 1999 to 2002 also pursued a strong "rights agenda" in their policy advice, which again the Coalition government was not keen on. Since being re-elected as ATSIC chairperson for a second term in late 2002, Clark's ability to continue this strong independent advocacy has been somewhat curtailed. Various legal entanglements arising from his recent and more distant past behaviour have been pressing in on Clark and, at the time of writing (July 2003), he has been asked by the Commonwealth minister overseeing ATSIC to show cause why he should not be dismissed as chairperson for misbehaviour. ATSIC more generally is also under review by the Coalition Commonwealth government and has, as part of that process, recently been stripped of its ability to make individual funding decisions. These changes have largely gone unchallenged by the Labor opposition, which, when in government fifteen years ago, created ATSIC.

Clearly Australian governments, and oppositions, still have some reservations about the idea of a government-resourced, but strongly independent national Indigenous political body of the type which Weaver advocated. While national governments in Australia and Canada clearly want Indigenous interests to be organised, in order to deal with them in an orderly fashion, they are less sure about giving over effective policy-making power and resources to those interests.

Nations Within

I want now to turn to another aspect of Weaver's analysis of Indigenous affairs policy making in Canada and Australia. Weaver noted that the "demands" of the Indian and Aboriginal movements of the late 1960s and early 1970s in Canada and Australia were:

strikingly similar: equality of access to society's resources.... land rights and participation in the decision-making processes that affected their lives and defined their ethnicity (1984, 193).

But she also noted that these demands did not all fit the "normal categories of social policy," such as race and poverty. They called for "recognition" of Indigenous people's "unique aboriginality," for resources "to flow from this recognition" and they "required the intellectual ability to conceptualize issues in new ways" (1984, 196). Weaver instanced the Dene people's 1975 call for recognition as a "nation within a nation" and how this:

disturbed government personnel, who responded to the rhetoric more than to the reasoning of these demands.... In short, governments were unaccustomed to politically active, if unorganized, aboriginal constituencies which were demanding a new policy paradigm (1984, 196).

Despite the unease of many in government, Weaver also noted that "sympathetic officials and ministers fought against indifference and opposition" and that new policies had emerged "which incorporated some elements in the self-definitions of aboriginal minorities" (1984, 196). She even boldly predicted in 1984 that:

Having become politically-active constituents of the nation-states, during the 1960s and '70s, native peoples will become more effective in pursuing their demands. And their demands for unconventional policy paradigms will persist because these paradigms affirm their unique ethnicity, the essence of which is their relationship with the nation-state (209).

In 1990 Weaver was able to argue that “a new paradigm in Canadian Indian policy” was indeed emerging and that two recent government-sponsored reports had identified many of its core elements — the Penner Report on Indian self-government in 1984 and the Coolican report on comprehensive land claims in 1986 (1990). Weaver identified key ideas, in the new policy paradigm and contrasted them with the ideas of the old “outmoded analysis.” Ideas, she argued, are among the “most important forces for political change” and there had been no shortage of them in Indian policy over the previous decade. While the new ideas had not yet been whole-heartedly taken up by the Canadian government, they were not going away either. They were “hovering” over the policy field, causing “turbulence” and “turmoil” due to their “co-existence” with the old policy paradigm (1990, 9-10). But they would, she argued, eventually and “inevitably” prevail and in the “transition period,” she warned:

expect to see erratic policy experiments, unfocussed initiatives and false starts until the new mode of thinking settles into acceptance (1990, 10).

The first key idea of the new paradigm was, Weaver argued, that the “relationship between First Nations and the state” was “permanent” and “organic,, so there could be no talk of “termination,” or of final settlement, as under the old paradigm. Talk had to be of “adaptation in perpetuity... respecting each other’s autonomy but seeking peaceful co-existence” or of “lasting agreements... that are flexible and evolve over time” (1990, 11). The second key idea of the new paradigm was that the relationship between the state and First Nations involved “sanctioned rights... that are recognised by the state as justified claims against its behaviour and resources,” whereas under the old policy paradigm “needs... were uppermost in the thinking of policy makers” (1990, 11). The third key idea of the new policy paradigm was that “First Nations cultures... change and evolve over time” leading to “sustained cultural co-existence with the Euro-Canadian cultural system,” rather than diminishing Indigenous cultures “under the force of acculturation” as under the old paradigm (1990, 12).

I will not try to summarise all Weaver's key ideas of the new paradigm, and her contrasts with the old. Suffice it to say that they involve very significant changes in conceptions of Indigenous issues within Canada. Indeed, although Weaver does not overtly reflect on it, the introduction of the term "First Nations" is itself the most fundamental key shift, as reflected in the transformation of the NIB into the Assembly of First Nations in Canada between 1980 and 1982. This was no longer just social or economic policy directed to a disadvantaged group designated as Indians, but intergovernmental relations with peoples designated as nations.

Two years after Weaver wrote about this new paradigm in Canadian Indian policy two other Canadian social scientists, Augie Fleras and Jean Leonard Elliott, published a book-length study which set out to "chronicle" the "emergent paradigm shift in aboriginal-state relations" not only in Canada, but in the United States and New Zealand as well. There had, they argued, at Indigenous people's initiative, been a shift back towards "group entitlements" as "nations within" (1992, ix). Four years later again, in 1996, the Canadian Royal Commission on Aboriginal Peoples also picked up on the theme and made it its own. Relations between settler and Indigenous Canadians had, on contact and for some time thereafter, the Commission argued, been those conducted between nations. Only in the last two hundred years had the nature of this relationship been displaced and lost sight of, and it was the Commission's view that it was now time to renew the relationship by reasserting some of the original principles. Chapter 14 of Volume 1 of the report of the Royal Commission was entitled "The Turning Point" and included the following:

The first and perhaps most important element is the need to reject the principles on which the relationship has foundered over the last two centuries...

The second fundamental element is to recognize that Aboriginal peoples are nations and that the nationhood dimension of Aboriginal social and political organisation must be recognized and strengthened....

A third fundamental element is to recognize that Aboriginal nations were historically sovereign, self-governing peoples and that the time has come for other governments in Canada to make room for Aboriginal nations to reassume their historical self-governing powers....

Aboriginal peoples have historical rights. They form distinct political communities, collectives with a continuing political relationship with the Canadian state. This is the central reality Canadians must recognize if we are to reconstruct the relationship (609-612).

In Australia, this sort of new paradigm thinking has not yet intruded so thoroughly and deeply into government-sponsored reports, or indeed into Indigenous peoples representations of themselves to the larger Australian public. Groups like the Jawoyn and the Wiradjuri have occasionally identified themselves as nations and there is an alliance of Aboriginal people in central Australia which from time to time refers to and presents itself as the Combined Aboriginal Nations of Central Australia (CANCA). There is also, more based in south-eastern Australia, the long-standing, but not very active, Aboriginal Provisional Government (APG), associated with Michael Mansell and also at one time Geoff Clark. But in comparison with Canada, neither Indigenous people themselves, nor government report writers, have embraced the new paradigm's language with such vigour.

A few academics in Australia have picked up on the language of the new policy paradigm, particularly since the Australian High Court's 1992 Mabo decision recognising ongoing common law native title. A year or so after that decision, law professor Garth Nettheim wondered why, if the law could recognise Indigenous land rights, it could not also recognise Indigenous political rights of self-government (Nettheim 1994). A year or so later again history professor, Henry Reynolds, published *Aboriginal Sovereignty: Reflections on Race, State and Nation* which had on its back cover the following:

Since Federation, Australians have thought of themselves as one sovereign nation. A nation for a continent. But what of the original Australians?

Are they nations within?...

Can there be self-determination for the “nations within” a nation state? (1996)

Reynolds’s answer to these questions in 1996 was a creative “yes,” built around breaking the nexus between the terms nation and state. There is not, he argued, one nation, within the Australian state, but three; an Aboriginal nation, a Torres Strait Islander nation and a settler nation of colonists, immigrants and their descendants. Others will number the nations differently, identifying numerous Aboriginal nations rather than one. But the creativity of Reynolds’s answer remains. Australia can address the issues of its Indigenous minorities, its nations within, by decoupling notions of nation and state, by adopting in Weaver’s terms the new policy paradigm.

If Weaver had been alive in the late 1990s, like her fellow Canadian Jim Tully, she would, I believe, have been gently encouraging Australians to see the relevance to Australia of the Canadian Royal Commission’s “vision” of a “fair and just relationship” between Indigenous peoples or nations and the larger nation-state (Tully 1998). Unfortunately, for Australian – Canadian studies, Weaver died in 1993, aged only 53.

Inevitability and Outmoded Analysis: Concluding Comments

In this concluding section of the paper I wish to focus a little more critically on two aspects of Weaver’s arguments about the emergent paradigm shift in Indigenous affairs policy: the inevitability of the new paradigm prevailing and the outmoded nature of analysis under the old paradigm. Although I do not disagree with either of these claims, I think they need to be understood as somewhat more limited and

contextualised than they might at first appear. Australia and Canada do, I believe, have converging futures in Indigenous affairs policy under the new policy paradigm, but remnants of the old paradigm will and should persist.

First, let us focus on the issue of inevitability. Like Weaver in the Canadian context, Reynolds ended his 1996 book on Aboriginal sovereignty in Australia on a note of inevitability:

Australia must make a success of the mixing of different cultures in the cauldron of the state. We must create a situation where nations and minorities feel no desire to lapse into a condition corresponding to that of men who renounce intercourse with their fellow men. There is no acceptable alternative scenario (185).

Weaver's final words in 1990 were:

Resistance to fundamental change has persisted, but basic reform is inevitable for the First Nations will not endure frustrations forever, and old paradigm "solutions" will become less and less tenable as new paradigm thinking reveals their outmoded analysis of the state's obligations to First Nations peoples (16).

There is a note of imploring in both these statements of inevitability which perhaps suggests that they are statements of philosophical and moral conviction, rather than political prediction. Indeed, in Australia since 1996 under a Coalition Commonwealth government, one could be excused for believing that, as political prediction, these statements were simply wrong. The Howard Coalition government has rejected new paradigm thinking in Indigenous affairs with a vengeance, seeing it as symbolic rather than practical and a distraction from "real" problem solving. But Weaver's (and Reynolds's) statements of inevitability were, I believe never intended to be short term political predictions. Recall also that Weaver predicted some "erratic policy experiments, unfocussed initiatives and

false starts” along the way (1990, 10). This would seem to be what is happening in Australia at present.

The sense of inevitability which both Weaver and Reynolds refer to is in part, I think, a longer-term moral and philosophical one; an enlightenment sense that, in the longer run of public debate, the logical coherence and historical consistency of new paradigm thinking will, eventually, lead to it prevailing. It is also in part, I think, a conviction that the tide of world history has been, in recent years, and is at present moving inexorably in a direction of decolonisation and that the new paradigm sits more comfortably with this tide of history than the old. The Canadian Royal Commission reflects on this historical sense of inevitability when it writes that:

We are in the post-colonial era. The world has changed, and if Canada wants to retain a position of respect and influence in world affairs, Canada must change too. We cannot continue to advocate human rights to the third world while maintaining the remnants of a colonial system at home (610).

Seeing Indigenous peoples in Canada and Australia as nations within is part of a conceptual process of decolonisation. And as Australians have learned over recent years, if a national government refuses to make that conceptual shift in this historical era of decolonisation, that government does increasingly face the criticism of international institutions associated with human rights and the United Nations. So there is, I believe, both an historical and a philosophical and moral sense in which the ascendancy of the new paradigm in Indigenous affairs in both Canada and Australia is indeed inevitable.

What then of the old paradigm and its outmoded analysis? To the extent that the new decolonising paradigm will, by force of logic and history, prevail, the old paradigm is of course outmoded. But its analysis is not, I would argue, entirely superseded. It still does make sense in public policy debates to talk of Indigenous people’s “needs,” as well as rights, and to compare Indigenous people, as interests, with others. Weaver’s early work, which undertook such comparison, was

good political science identifying how governments found organised interests easier to relate to than unorganised ones. This sort of political analysis, or more socio-economic analysis of Indigenous people's needs, is not so much outmoded as just limited. It needs to be accompanied and complemented by new paradigm analysis of Indigenous peoples as nations within if a fuller and more rounded picture of Indigenous issues in countries like Canada and Australia is to be achieved.

Weaver was probably slightly overstating the outmoded nature of old paradigm Indian policy analysis in an attempt to get new paradigm thinking slightly more well established. Once new paradigm thinking is entrenched, perhaps old paradigm analysis can once again be respected as not entirely outmoded, but rather just limited. However until the "nations within" conception of Indigenous issues in Canada and Australia is far more well accepted, old paradigm pressure group or socio-economic needs analysis will probably continue to be denigrated. The different forms of analysis should in time be able to be seen as complementary, rather than competing or mutually exclusive. But that time may still yet be some way off.

Australia and Canada do, indeed, have converging futures in Indigenous affairs under the new policy paradigm, but elements of the old paradigm will and should remain. The conceptual change from unorganised interests to nations within is of the utmost importance, philosophically, morally and politically, but it should not be exclusive.

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Notes

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Hugh Brody. *The Other Side of Eden: Hunter-Gathers, Farmers, and the Shaping of the World*

Faber and Faber, 2001

English anthropologist Hugh Brody has spent the majority of his career studying hunter-gatherers in the far north of Canada. In the 1970s he worked with the Canadian Department of Indian and Northern Affairs, and then with Inuit and Indian organisations mapping hunter-gather territories (featured in his work *Maps and Dreams: Indians and the British Columbia Frontier*, 1981), and researching land claims and indigenous rights. Brody acted as advisor to indigenous communities facing encounters with large-scale development, including the Mackenzie Pipeline Inquiry, and was chairman of the Snake River Independent Review. He is currently working with the South African San Institute on Bushman history and land rights in the Southern Kalahari. *The Other Side of Eden* continues to reinforce Brody's strong reputation as a human and intellectually relevant ethnographer. Brody is also a documentary filmmaker, and his strong visual sense makes for elegant and compelling writing. His rendering of Inuit life in the Arctic landscape is dramatic, and allows those of us who have never experienced such an environment to imagine what life may be like for the people who live there.

Brody begins his journey through the far north in the 1970s, living in Rankin Inlet to learn the rudiments of Inuktitut language, and later travelling north into the High Arctic to Pond Inlet, an Inuit community at the northern tip of Baffin Island. Here Brody takes

us deep into the beautiful yet, as he admits, sometimes terrifying landscape of the Inuit world:

The entire surface of the world was flowing along at knee height. There were no features to the earth; the dog team was half immersed in this strange current of snow. I stood long enough for the sledge and Paulussie to be no more than a blurred, grey movement at the edge of the light (3).

Brody recounts experiences of his more recent visits to Inuit friends in Arctic villages, and then travels far below the Arctic tree line to the Dunne-za and Nisga'a peoples of British Columbia. Framed by these cultures and landscapes, Brody offers the reader a succinct and engaging exploration of the anthropology, archaeology and linguistics of hunter-gatherers. Ideas, concepts and issues crucial to an understanding of hunter-gatherer communities and their histories are drawn out: creation stories, both biblical and indigenous; the effects of colonisation on hunter-gatherer peoples; the power and importance of language; the fiction of empty wilderness; and the brutal arrogance of the Church are all covered with a brevity, command and lack of intellectual pretension lost in many more overtly academic works. Brody's writing is emotionally honest: he admits that he is a writer on a personal, as well as scientific, journey. He writes of his deep fear when lost alone out on the ice, utterly disorientated and desperate without the knowledge of his Inuit companions. Brody's openness and lack of explorer heroics allow the reader to engage in a deep empathy with the writer. It also gives his work a rare sense of the cultural, social and physical isolation experienced by many field researchers.

Brody's core project is an exploration of the conflict between hunter and farmer that lies at the core of the human story; an intellectual analysis steeped in the Book of Genesis, the biblical creation myth at the centre of the agriculturalist view of the world. His obsessing question is: Why did the farmer triumph? Brody observes, "The truth of genesis lies in the profound and disturbing insights it offers into the heart of the society and economy that come with — and descend

from — agriculture. Farming has shaped much of the world — its heritage, nations, and cultures” (79). Brody questions the assumption that agriculturalists have been settled while hunter-gatherers have been nomadic, asserting that the opposite is in fact true: “... it is the agriculturalists ... who are forced to keep moving, resettling, colonising new lands” (86).

This theory of “landless peoples” has been utilised by colonial forces as the legitimisation for expulsion of indigenous peoples from their lands. Brody outlines the colonial processes that have transformed, yet not destroyed, hunter-gatherer life. He asserts that while there are virtually no communities left which live purely as hunter-gatherers, adaptation to change does not indicate that these cultures are “dying out.” To put hunter-gatherer stereotypes in dramatic historical perspective, Brody counters that the first people genetically the same as us (*Homo sapiens*) are dated to 200,000 to 400,000 years (the time scale is in dispute). Yet, until as late as 12,000 years ago, all human beings on earth were hunter-gatherers (110-111). Brody’s work reminds us that the features we recognise as the institutions of modern civilisation, including all conventions regarding government and private property, were in fact only invented during the last one percent of human history.

Contemporary Inuit life, and to some degree nearly all hunter-gatherer livelihood, is a mixed survival of wage labour and the utilisation of local natural resources. Brody expresses deep admiration for hunter-gatherer peoples and their tenacity and survival in the face of sometimes overwhelming odds. His analysis of the farmer and hunter-gatherer ways of life suggests we move beyond ignorant dichotomies and accept that there are various ways of being fully human. *The Other Side of Eden* serves as a reminder that all human groups have been evolving for the same length of time, only in sometimes dramatically diverse ways, and within enduring cultural traditions.

**Roslyn Kunin, ed. *Prospering Together:
The Economic Impact of the Aboriginal Title
Settlements in B.C.***

Vancouver: Review of The Laurier Institution, 2001

British Columbia joined Canadian confederation relatively late in Canada's national history, coming under British colonial authority after 1846 and entering the Union in 1871. The eastern provinces of Canada had already amassed considerable experience in treaty-making prior to the first treaties in British Columbia: the 1950s Douglas Treaties on Vancouver Island. Aside from one treaty (Treaty 8) covering a portion of the north-east of British Columbia made in 1898, there were no other treaties negotiated on the British Columbia mainland prior to the Nisga'a Agreement in Principle in 1996 (Colenbrander 10). This history makes the contemporary treaty process in British Columbia significant in relation to the treaty processes in the other Canadian Provinces.

For Australians, the relative paucity of treaty negotiations in British Columbia and the recent re-emergence of such negotiations to address control over resources, land use, self-governance and territorial authority, pose an important basis of comparison with Australia's experience in recognition of native title, community governance and entitlements to compensation in resource development. Post-Mabo, both Canada and Australia face legal recognition of a common law right of Native (or Aboriginal) Title to land, and the prospect of compensation claims for discrimination, should those rights be trammelled upon by State/Provincial or Federal governments. Resource industries, in particular, have expressed considerable concern about the effects of both the lack of resolution of land entitlements and control, and the process of negotiating any

resolution, often expressing their concerns in terms of the economic impact of the “uncertainty” surrounding access to resources in land rights claims.

This collection of essays reflects the Laurier Institute’s commitment to challenge the myths and misunderstandings surrounding cultural diversity in Canada (v). The Institute is a non-profit organisation of business and community leaders in Vancouver, committed to the value of cultural diversity, tolerance and mutual respect. This collection is aimed at an audience of intelligent members of the community and business interests, in British Columbia and beyond. The authors of the chapters have academic, legal and policy expertise, and are writing for a non-specialist audience. The work draws on the disciplines of history, anthropology, law, public policy, health and education. The editor, Rosalyn Kunin, provides a detailed introduction and summary of the chapters in this edition (xii-xxxviii).

The chapters cover recent events in the B.C. Treaty Process (1998-2001); a brief history of First Nations and Colonial, Provincial and Federal relations in B.C.; the legal status of Aboriginal title, treaties and negotiated settlements; an account of the different relations regarding land, resources and culture held by the different First Nations in B.C.; natural resources management; the effects of land settlements on investment and capital in lands affected by Aboriginal Title; the potential, capacities and needs of First Nations communities in taking up the opportunities for greater autonomous control over land and resources; the impact of settlements on the health and welfare of First Nations that may be able to take greater control at the community level and the resulting changes in the need for government assistance in these areas; the potential and significance of greater First Nations self-government resulting from greater territorial control; and the costs to governments (and so to taxpayers) of settlement of Aboriginal Title claims. The overall tenor of the chapters is to demonstrate to business and community interests the importance of recognising Aboriginal Title, for negotiating with First Nations and for contributing to a process which will place First

Nations in a stronger position for taking on the self-governance, resource management and control over land that will result from either formal treaties or negotiated agreements relating to their lands. The chapters go beyond a description of the current state of affairs to arguments that propose mutually beneficial approaches that make significant progress towards full recognition of First Nations' claims while supporting the overall interests of British Columbians in fair, responsible and economically sound processes. In short, the book proposes a means for First Nations and other Canadians to "prosper together."

An underlying theme (made most explicitly in the new chapter in this revised edition by Peter Colenbrander) is that British Columbians and resource industries cannot afford to refuse to negotiate with First Nations, and that First Nations in B.C. have, thus far, been very reasonable in their treaty demands, but if land claims are forced to go through the Court processes, the costs to B.C. and business are likely to be much higher than if negotiated settlements are agreed to outside of Court decisions (A-7-10). If British Columbians choose not to negotiate with First Nations, they may impoverish themselves while failing to treat First Nations fairly.

Colenbrander's chapter is the major addition to this revised addition, so it is worthy of particular attention. It reviews significant legal findings and negotiations that occurred between the writing of the first edition (1997) and 2001. This chapter is able to pick up some of the loose threads of the first edition, in particular the outcome of the Canadian Supreme Court's decision in *Delgamuukw* (December 1997) and the Nisga'a Final Agreement (which passed into law in 2001). At the risk of oversimplification, *Delgamuukw* is particularly significant for its definition of Aboriginal title as a property right in the land itself (contrasted with a bundle of rights to use of the land for traditional purposes and benefits from the bounty of the land). The Court found that Aboriginal title is a form of common law ownership which includes rights of exclusion of others, extraction of resources, control, management and financial benefit (A-5). As a common law

right, the onus is on governments to negotiate with First Nations owners and limits their ability to impose legal interference with such rights without prior negotiation and adequate justification.

The Nisga'a Final Agreement has been a long process over twenty three years of negotiation, and, as Colenbrander notes, some aspects had not yet come to a final resolution as the B.C. Liberal party challenged the legitimacy of the Nisga'a Final Agreement in setting up a Nisga'a government with powers that are constitutionally reserved for the federal and provincial governments. Subsequent to the publication of this work, the B.C. Supreme Court in Campbell (2001) found that self-government is an Aboriginal right, that remained outside of the powers of the federal provincial governments at the time of confederation (see B.C. Treaty Commission, *Annual Report 2002*, <http://www.bctreaty.net>). The Nisga'a Final Agreement is the first modern treaty in B.C. to have constitutional protection under section 35 of the Canadian Constitution which "recognises and affirms" existing Aboriginal rights and treaty rights. The Nisga'a Agreement formalises both land rights (Aboriginal title) and limited self-government rights (jurisdiction) in the course of an extensive (700 page) document.

Colenbrander's chapter also provides an update on the state of play of treaty negotiations among First Nations in B.C., drawing on reports from the B.C. Treaty Commission that show that of 51 First Nations in B.C., 44 First Nations have begun detailed negotiations at the level of "agreement-in-principle negotiations" (A-27). A further First Nation, the Sechelt Band, is at the stage of a Final Agreement, meaning that it is ready to finalise a treaty. This record suggests two things: First Nations are eager to have their claims settled, and the process of negotiation over three decades has a very poor record in concluding agreements. The costs to First Nations (and governments) associated with delayed and slow negotiations are huge, and will ultimately have to be included in payments from governments to First Nations as part of settlements. This theme is taken up in the final chapter of the collection, by Brian Scarfe, in which a framework

for assessing how the costs of compensation and redistribution of resources in light of settlements will be borne by provincial and federal governments and taxpayers.

In order for First Nations to realise many of their goals of self-determination, a degree of financial independence from government, and effective land and resource control, there is a need for more than recognition of ownership of land and resources. There is also a need for substantial investment in the human capital within First Nations communities. In order for resource industries to be able to have secure investments in resources controlled by First Nations, there is a need for First Nations community members to have the skills, education and leadership capacity to manage the resources under their control well and to make sound judgements about resource use, capital investment and development. Three chapters of this collection address different aspects of these issues: Paul Mitchell-Banks addresses post-settlement access to natural resource, Steven Globerman addresses issues of capital and investment, and Stephen McBride and Patrick Smith examine the gap between current education levels and employment opportunities among First Nations and the demand for a well-trained First Nations population as greater control over land, government and resources is gained. McBride and Smith note the vital importance that greater education and training opportunities among First Nations in B.C. be coupled with recognition of and education in each community's language and culture. The residential schools system in Canada has an impact on First Nations culture and language, and the sense of alienation among those who attended the schools is similar in many respects to the effects in Australia of the policy of removing Aboriginal children from their families (the Stolen Generations). In that context, changes to educational programs among First Nations in B.C. will need to be articulated and controlled by First Nations communities, not by the demands of industry or governments alone.

First Nations not only lack employment and educational opportunities relative to the broader Canadian population; they also suffer poorer

health and greater incidence of disability on almost any measure of population health. Lee Morrison and David Fish explore some implications of transferring responsibility for and management of health services to First Nations, in light of the existing poor health statistics evident among the First Nations of B.C., and in the context of the federal and provincial responsibilities for health care and welfare provision. It is in this chapter that one can see some of the aspirations of First Nations as a result of settlements, and the close integration of land rights, resource control, self-government rights and responsible management of a community's welfare interests. The proposals canvassed by Morrison and Fish reflect an intricate understanding of the bureaucratic and policy context within which debate about health care must take place, and, at the same time, reflect the particular interests of First Nations in wresting some control over health services with the aim of making a significant improvement on health outcomes. The impact of settlements in this regard is considerably more than a symbolic recognition of First Nations' entitlements: it is a matter affecting the lives and life expectancy of members of First Nations communities.

Greater public understanding of the relations that indigenous peoples hold with land and culture are central to just recognition of what is at stake in treaty negotiations and land settlements. While the Canadian history is different from Australia's, both countries have used the doctrine of terra nullius to assert authority and territorial control over First Nations and their lands. The effects of the myths held by non-indigenous Australians and Canadians surrounding indigenous people's use and relations to land will take ongoing effort to dispel. Greg Poelzer's chapter in this collection provides an overview of the kinds of ownership relations enjoyed by different groups of B.C. First Nations. This chapter provides an insight into the diversity and adaptability of First Nations in their economic relations, modes of material production and means of meeting their material and cultural needs through the land and natural resources. Those who wish to understand why different First Nations (and different Bands)

negotiate agreements on different terms will benefit from Poelzer's analysis.

While *terra nullius* has been successfully challenged to some degree in law in relation to land, the legal standing of indigenous people's sovereignty has not yet been carefully addressed in the Canadian or Australian courts. The Nisga'a Agreement (especially after Campbell) provides some glimpse of what recognition of First Nations regional sovereignty might look like. Thus far, however, no treaty or agreement has established rights of sovereign authority; they are framed in terms of limited self-government rights. Ken Coates's chapter unpacks some of the tensions and complexity of the quest for self-government that lies at the heart of First Nations treaty negotiations. Democratic governments reject subjection to arbitrary authority. First Nations in B.C. have been subject to an authority to which they have not consented since 1846. It is not surprising that First Nations view treaty negotiations as one means of regaining political authority over their territory and communities. Given the current situation of First Nations in B.C. (after 150 years during which their self-government rights have been usurped and denied), the B.C. and Canadian governments ought not simply abandon First Nations to self-government. Coates examines the intricacies of the relations between federal, provincial and self-governing First Nations to shed light on how such self-government can be effectively negotiated and implemented. As he writes, there are no simple solutions in this area, but that does not mean that the quest can be abandoned.

This is an important book and its influence should stretch beyond British Columbia. There is some unevenness in the quality and clarity of the chapters, and some of the information has dated; nonetheless, the overall quality and importance of the book more than makes up for its minor flaws. It is a book that should be read by those who are uncertain about the economic and social impact of land rights negotiations with indigenous peoples, by policy-makers and by business people who are involved in self-government negotiations and business transactions with indigenous communities.

Barbara Ann Hocking

Paul Robert Magocsi (ed). *Aboriginal Peoples of Canada: A Short Introduction.*

University of Toronto Press, 2002

There are many comparative books dealing with native title and many more comparative books dealing with indigenous citizenship, rights and dispossession. The Preface to this book dealing with Canadian First Nations explains its rationale. The edited collection is an “outgrowth” of the *Encyclopedia of Canada’s Peoples*, which was published in 1999 and on which the editor served as editor-in-chief. The *Encyclopedia* contains information about 119 different peoples who have lived at some time within modern Canada’s boundaries. Both its length — over 1400 pages — and its price, limited its accessibility. This collection is therefore aimed (as was the *Encyclopedia* originally) at providing easily accessible information to as many readers as possible about “the richness and variety of Canada’s population in the past and present” (viii). This first portion of the *Encyclopedia* contains the entry on the First Nations and it is intended that other volumes will follow, also drawing on the *Encyclopedia*, dealing among other entries, with Caribbean peoples, Slavs, East Asians, Latin Americans, Muslims, Scandinavians and South Asians. The chapters in this book cover Algonquians/Eastern Woodlands, Algonquians/Plains, Algonquians/Subartic, Inuit, Iroquoians, Ktunaxa, Metis, Na-Dene, Salish, Siouans, Tsimshian and Wakashans. The factual basis to each chapter is an interesting mix of historical, cultural, geographical, political, social and economic dynamics. It is also interesting to read of some many disparate and varied First Nations peoples and to gain a perspective on the differences that lie between them at the cultural level and the similarities that they have experienced in dealing with the dominant societies encapsulating

them — particularly the establishment of residential schools and separation of families — that have echoes also in the Australian situation. The chapters in the Magocsi volume synthesise effectively and could provide a model for a similar collection in the Australian context (the *Encyclopedia of Aboriginal Australia* (ed David Horton, Australian Institute of Aboriginal and Torres Strait Islander Studies), and the recently launched *Forget About Flinders* (2003 Yanyuwa families, John Bradley and Nona Cameron, Brisbane) provide examples of Australian models to date).

There are some minor criticisms I would make of this book. The first concerns the issue of nomenclature or the labelling that is adopted. Magocsi says on page 8: “Selecting appropriate nomenclature for those previously known as ‘Indians’ is difficult.” and then goes on to explain why he uses “aboriginal peoples, indigenous peoples, and natives” and then often more specific terminology.

It may not just be a matter of what is the appropriate nomenclature: who is to decide whether to adopt “peoples/nations” or “tribes” – and who to decide whether or not those terms are or are not synonymous? It is also a matter of who controls the naming process in the first place. An analogy could be the usage of the terms ‘underdeveloped’ versus “developing” when referring to so-called third-world nations. In that instance, the apparently subtle shift to the gerund form makes a huge difference to the issue of agency. Magocsi seems surprisingly unaware of the power of these public terms for First Nations peoples in his volume; a lack of awareness which somewhat weakens the persuasiveness of the analysis.

It might be noted in this context that the Fourth World documentation project online has a number of articles that refer to the use of the term “Fourth World” to describe nations/peoples and why they have chosen this term. The debate still rages about this concept but the point is that some indigenous nations have adopted this terminology because it allows the more commonly known categories of “first, second and third worlds” to be deconstructed further to take account of distinctly cultural elements over economic

considerations. In Paul Havemann's edited volume, *Indigenous Peoples' Rights in Australia, Canada and New Zealand* (Oxford University Press, 1999), the term "First Nations" is adopted, primarily as it gives the essence of having been the indigenous nations present when colonising forces came. Ultimately indigenous peoples need to be able to define themselves and scholars need to allow them to do so. There is a need to start using/explaining/legitimizing indigenous peoples' concepts in their own terms. An effective way is the use of glossaries, as in Havemann's volume with its glossary of Maori terms. This gives better agency to the peoples involved and makes readers grapple more with indigenous concepts and epistemologies.

There are also hints in some of the chapters in *Aboriginal Peoples of Canada* of related language difficulties: for example, in the chapter entitled "Iroquoians" the author observes of religion: "Like other aboriginal peoples in Canada, Iroquoians traditionally did not have a 'religion' in the European sense but practised a type of animism or shamanism that did not clearly distinguish between natural and supernatural worlds." While the observation may be accurate, it seems arguable that the label of animism may just as equally be a label drawing upon European associations as the word "religion." There are dangers involved with these types of terminology given their historically negative associations with "backwardness," "savagery" and "barbarianism" – the rhetoric of colonisation. On the other hand, with the rise of new-ageism, "animism" becomes a romanticised notion and indigenous people's ontologies and epistemologies become mystified and delegitimated – ritual elements are often exoticised whilst the everyday lived reality misses out again.

The second criticism concerns the provision of "further reading" at the end of each chapter rather than reference sources within the chapters themselves. This makes it difficult to assess the veracity of comments such as this in the chapter called "Ktunaxa:" "Around 1950, parents stopped trying to teach their children the Ktunaxa language; they were concerned about the children having the same difficulties in school that they had." (186). Such general statements

are somewhat difficult to interpret without a specific reference or source to relate them to.

However these are perhaps unavoidable problems in writing of other peoples and cultures – note the proviso to the *Encyclopedia of Aboriginal Australia* that “Readers of this work should be aware that in some Aboriginal communities, seeing the names and photographs of dead people may cause sadness and distress, particularly to relatives of those people.” The recent furore over Keith Windschuttle’s book *The Fabrication of Aboriginal History* also tells us that history is always a matter of interpretation. This book is a useful and valuable source of information as to the profoundly similar impact of settlement on the aboriginal peoples of Canada, while drawing the attention of Australian readers to a longer period of recognition of their “historical and contemporary role” in Canadian society (7). More similarly to New Zealand than Australia, too, “their demands for justice became more insistent, and, in the 1980s and 1990s especially, their political leaders made them a formidable force in protracted disputes over land claims, constitutional renewal, and recognition of minority rights” (3).

Looking at the range of Aboriginal peoples in the book makes us aware of their unique cultures while at the same time alerting us to the dauntingly similar challenges they face vis a vis the dominant culture.

Contributors

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