

June 1, 1999

Presentation to **ANTaR**<sup>1</sup> National Seminar  
***Forging a New Relationship,***  
State Library of New South Wales, Sydney, June 2, 1999

## The Implications for Australia of Recent Canadian Experience

by Peter Jull<sup>2</sup>

*Many thanks to the traditional owners and other indigenous people of Sydney and Australia for this opportunity to speak. Thanks also to the organisers of ANTaR for this invitation and for all the good work all of you here are doing to give Australia hope of a better future in race relations.*

### **Introduction**

Most people realise that Australia and Canada are much alike. Their history, federal structure, huge sparsely populated hinterlands, coastline on several oceans at once, and, of course, continuing presence of indigenous peoples in remote areas no less than large cities are all similar. Even their differences may be illusory: if one travels from the temperate climates of Atlantic Europe it may not matter much whether January temperatures are -40 degrees in Central and Northern Canada or +40 degrees in Northern and Central Australia because both seem extreme and unpleasant.

There is a myth in Australia that Canada has a unique legal framework which explains the relative progress in that country's indigenous policy in recent times. The truth is that legal devices remained unknown or moribund until the non-indigenous public was ready to 'discover' them in recent decades. In other words, indigenous rights and policy in Canada have depended on social attitudes, political pressures, and the ability of indigenous peoples to use the political and legal system to their advantage. Until very recently the Indians, Métis, and Inuit peoples were badly treated and their rights ignored just as thoroughly as peoples in many other countries.<sup>3</sup>

The change came after the Western world turned with revulsion against Nazi racial violence towards Jews, Slavs, Gypsies, and others, and enshrined ideals of tolerance in United Nations documents and institutions. Canada, like other 'first world' countries, recognised that racial tolerance and equality were fundamental requirements of civilised society in the modern world. Better education enabled indigenous peoples to demand more confidently that governments live up to their

---

<sup>1</sup> **Australians for Native Title and Reconciliation**

<sup>2</sup> Adjunct Associate Professor, Dept of Government, U. of Queensland, Brisbane, Q. 4072. Because Jull has been describing Canadian experience at the request of Australian audiences and publications since the late 1980s, a number of his publications which may be of interest to the ANTaR audience are found in the footnotes of this paper.

<sup>3</sup> The best general introduction to Canadian indigenous-white history will re-appear in coming months in an updated and expanded second edition, JR Miller's *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, University of Toronto Press, Toronto, first edition 1989.

stated ideals of equality or ‘mateship’. The long post-war economic boom after Depression and War provided fertile ground for a more open society and deepening of civilised ideals which were made much more widely available through mass media – everything from TV to paperback books.

Then, and only then, did Canadians begin to use legal devices available to them to mend their national ways. It required ingenuity by judges and politicians to fix a creaky old system based on the assumed superiority or even perfection of European ways. What is important to note is that Canada’s recent progress in accommodation of indigenous cultures, political communities, and rights is based on factors which are no less active in Australia.

### **Some Recent Canadian Progress**

- *Ad hoc* funding of indigenous representative organisations by federal departments was converted to a national program in the late 1960s. The national and regional indigenous associations resulting acted like provisional governments pressing Ottawa to reform policy. They largely succeeded at national level and episodically at provincial and territorial levels. It seems likely that historians will see this as the key reform which made possible so much more across the country. Although ‘informal’, unlike the Sami parliaments in Scandinavia, these bodies wielded great influence, even renegotiating the Constitution with governments. However, they have essentially served as national representatives of regions and peoples, helping those achieve regional and local self-government and recognised power, rather than as primary bodies themselves.
- In Canada’s ‘Outback’ – the Arctic and Sub-Arctic hinterland – the material transformation into a new society in the White Man’s image so long imagined by Canadians has not occurred. Rather, not-so-new societies have newly re-emerged as a vital tapestry or patchwork of non-European cultures re-writing conventional notions of political economy.<sup>4</sup> Postwar attempts to assimilate these northern territories to boom-and-bust resource extraction ignoring social and environmental costs, and creation of public authorities in the White Man’s image and under his control, have come to seem no real vision at all. Indigenous movements, often supported by the national non-indigenous public, have achieved new development policies and practices; recognition of indigenous land, sea, and freshwater rights; and new political frameworks with unique self-government features to re-empower indigenous peoples. The Nunavut Territory created under its own Inuk premier and largely Inuit cabinet in April 1999 is one case which has received considerable media attention irregularly in Australia over recent years.<sup>5</sup> There has

---

<sup>4</sup> ‘The White Man’ is a term understood by indigenous and other non-European peoples all over the world. It refers to the historical political of Europeans on advancing frontiers, places which rarely included women in positions of power. It is not intended to deny the emerging societies of Australia or Canada today in which multi-cultural aspirations and the rise of women in positions of importance is a fact.

<sup>5</sup> A good general article with fine photos appears in *National Geographic*, September 1997; also, *Canadian Geographic*, January-February 1999, is a special issue on Nunavut, a magazine found in many Australian libraries. A frank new article by P Jull is ‘New Deal for Canada’s North’, *North*, 1/1999, Vol. 10, published by Nordregio, Stockholm, pp 5-10. See another piece by Jull on Nunavut in Australian context in forthcoming *Arena Journal*,

been much interest in Australia – and there is much relevance – in Canadian restructuring of northern territories and negotiation of land/sea rights *vis-à-vis* the Northern Territory, Torres Strait, and other parts of Outback Australia.<sup>6</sup>

- Since the 1970s there has been nearly universal agreement among indigenous peoples in Canada that self-government is the practical goal they are seeking within Canada in order to solve socio-economic problems and put an end to long-standing grievances. It is misleading for outsiders to read one or other document and draw too many conclusions because like any good constitutional evolution, the whole process and political culture have been emerging over time and has acquired its own rhetoric and buzzwords. The strategy is to return decision-making power and budgets for indigenous affairs to the local and/or regional indigenous communities.<sup>7</sup> Governments in Canada accept self-government in principle, and the federal government has formally accepted that it is a right included in the *Constitution Act 1982* affirmation of ‘aboriginal rights’. The most full explication and strategy for implementing this is contained in the final report of the Royal Commission on Aboriginal Peoples.<sup>8</sup>
- ‘Regional agreements’ as they are called in Australia, have been a principal device for the re-constituting of indigenous territories and their communities as political entities with land and sea rights.<sup>9</sup> These are negotiated ‘land claims’ settlements

---

Melbourne. Jull has other Australian publications on Nunavut, notably: *An Aboriginal Northern Territory: Creating Canada's Nunavut*, Discussion Paper No. 9, Australian National University North Australia Research Unit, Darwin, September, 1992, 39 pages. See also 'Promised Lands: Nunavut, "Bob", Yukon', *Arena Magazine*, No. 40, April-May 1999, pp 17-18; and, 'Nunavut or None of it?', *Arena Magazine*, No. 36, August-September 1998, Melbourne, pp 21-22. For more lengthy discussions and descriptions see Jull's 'Them Eskimo Mob: International Implications of Nunavut, Revised 2nd. edition', *For Seven Generations*, The Report of the Royal Commission on Aboriginal Peoples (1996), incl. Background Reports, etc., CD-ROM, Public Works and Government Services (Publishing), Ottawa; and *Indigenous Autonomy in Nunavut: Canada's Present & Australia's Possibilities*, Department of Government, University of Queensland, Brisbane, June 29, 1998. For relevance to Australia see Jull P, 1994: 'Emerging Northern Territory Constitutions in Canada: National Policy, Settler Hegemony, Aboriginal Ethno-Politics, and Systems of Governance', *Constitutional Change in the 1990s*, edited by R. Gray, D. Lea & S. Roberts, Northern Territory Legislative Assembly Sessional Committee on Constitutional Development and Australian National University North Australia Research Unit, Darwin, pp 94-116.

<sup>6</sup> E.g., Jull P, 1996: *Constitution-Making in Northern Territories: Legitimacy and Governance in Australia*, Central Land Council, Alice Springs, NT, 44 pp.; and Jull P, 1997: 'The political future of Torres Strait', *Indigenous Law Bulletin*, Vol 4, No 7 (November 1997), pp 4-9.

<sup>7</sup> Cassidy F & Bish RL, 1989: *Indian Government: Its Meaning in Practice*, Oolichan Books and The Institute for Research on Public Policy, Halifax; and, Crough G, 1997: *Indigenous Organisations, Funding and Accountability: Comparative Reforms in Canada and Australia*, Report Series No. 2, Australian National University North Australia Research Unit (NARU), Darwin.

<sup>8</sup> *For Seven Generations*, The Report of the Royal Commission on Aboriginal Peoples (1996) incl. Background Reports, etc., CD-ROM, Public Works and Government Services (Publishing), Ottawa. The report minus the background documents is available in thick paperback volumes, the key one being *Restructuring the Relationship*, Volume 2 (published in two parts), Report of the Royal Commission on Aboriginal Peoples, Ottawa, 1996.

<sup>9</sup> See Richardson BJ, Craig D & Boer B, 1995: *Regional agreements for indigenous lands and cultures in Canada*, Australian National University North Australia Research Unit, Darwin. Also, Jull P, 1995: 'Politics & Process: The Real World of Regional Agreements in the Northern Hemisphere', *ATSIC Regional Agreements Seminar, Cairns, 29-31 May 1995, Proceedings*, Aboriginal and Torres Strait Islander Commission (ATSIC), Commonwealth of

which flexibly accommodate existing third-party interests and provide self-government. This concept has worked so well in the outlying regions of the country that it is moving south into the ecumene and was an essential model for the national network of regional treaties proposed by the Royal Commission. In recent months three regional agreements have been making news, most recently the Labrador Inuit agreement on the North Atlantic, the Sechelt on the coast just north of Vancouver, and the Nisga'a treaty in north-western British Columbia.<sup>10</sup>

- Indigenous peoples have provided moral, intellectual, and political leadership for better environmental policy and processes across the country, especially in the northern two thirds of Canada, by means of political activity, litigation, and other peaceful means.<sup>11</sup> Where highly-educated white experts and cartons of glossy official publications failed to bring public and governments around, poorly- or non-educated indigenous peoples in down-at-heels remote villages have done the trick. There is a lesson for the world in this, surely.
- A particularly important change has been the new public attitudes, policies, and programs for the coastal zone.<sup>12</sup> Inuit in the Arctic and Indian peoples on the Pacific have won recognition for environmental protection and sustainable development as well as an understanding of their traditional dependence on marine and coastal resources. Far from mounting an attack on government they have induced governments to take their roles and responsibilities more seriously and improve their performance, in cooperation with indigenous peoples contributing their own experience and knowledge.<sup>13</sup>
- Since the late 1970s the indigenous peoples of Canada have been negotiating significant amendments to the Canadian Constitution with successive national prime ministers and provincial premiers. Something very like the Australian debate on indigenous content in a preamble took place in Canada in 1978-82.<sup>14</sup> Amendments achieved to date include recognition for native title and other rights, as well as the constitutional protection of regional agreements already concluded or yet to be negotiated. Perhaps more importantly, it is now accepted that

---

Australia, Canberra, pp 17-47; and Jull P & Craig D, 1997: 'Reflections on Regional Agreements: Yesterday, Today and Tomorrow', *Australian Indigenous Law Reporter*, Vol. 2, No 4, pp 475-493.

<sup>10</sup> See on-line respectively first Labrador and then the other two at:

<http://www.cancom.net/~franklia/main.html> and <http://www.aaf.gov.bc.ca/aaf/homepage.htm>

<sup>11</sup> The studies, books, and newsletter of the Canadian Arctic Resources Committee, a non-profit think-tank based in Ottawa, provide a picture of these developments since the early 1970s. CARC is now online: <http://www.carc.org/>

<sup>12</sup> E.g., Jull P, 1993: *A Sea Change: Overseas Indigenous-Government Relations in the Coastal Zone*, Resource Assessment Commission, Commonwealth of Australia, Canberra, September 1993, 156 pages.

<sup>13</sup> See Pinkerton E (ed), 1989: *Co-Operative Management of Local Fisheries: New Directions for Improved Management and Community Development*, University of British Columbia Press, Vancouver; and Inglis J (ed), 1993: *Traditional Ecological Knowledge: Concepts and Cases, International Program on Traditional Knowledge*, Canadian Museum of Nature and International Development Research Centre, Ottawa.

<sup>14</sup> Jull P, 1999: 'Constitutional Ambles and Preambles. With or without the country's indigenous peoples!?', Note, Department of Government, University of Queensland, Brisbane, February 11, 1999, 9 pages.

indigenous peoples must be able to represent themselves in constitutional and similar negotiations of fundamental national issues affecting them.

- Active international work by Canada's indigenous peoples, e.g., Inuit working with Inuit and Arctic and Sub-Arctic peoples in other countries, and in world forums like the United Nations and environmental conferences, has established new benchmarks and made accessible new sources of inspiration. Government views have moved from seeing such networking as political 'stunts'<sup>15</sup> to active cooperation and participation, e.g., in the multi-lateral Arctic Council of governments and indigenous peoples.

## **Discussion**

The Canadian indigenous political and policy scene since the late 1960s has been, in effect, a national negotiation. People did not sit earnestly at tables or spoke in clear tones exchanging ideas, positions, and ideas in point form. On the contrary, the process involved many players and was largely unwitting. It included:

- frequent refusal to meet from one or both sides, while slighting the other side through the media;
- court challenges to the law or the assumptions underlying law and constitution;
- protests of many kinds; occasional civil disobedience, mostly sit-ins, but also occasional blocking of highways, bridges, and railways (or threatening to block them);
- local or national media and publicity blitzes;
- angry or tearful submissions to inquiries, tribunals, royal commissions, regulatory panels;
- powerful public advocacy by indigenous men and women chosen by their communities or organisations to articulate needs;
- official bodies trying out proposals or programs and having them rejected, and then trying again;
- initially awkward and even embarrassingly awful media reporting which evolved into sound and frequent insights into the problems, thinking, and complexities of indigenous peoples; and only then, finally,
- genuine discussion, debate, and negotiation in *ad hoc* or continuing forums, some local and some at national level involving prime ministers and premiers, in which serious difficulties were worked out and given the authority of mutual consent.

However, through these processes, and the angry silences or loud outbursts which punctuated them, the whole public as well as most of the indigenous community – apart from some desperately deprived parts of the mid-north of Canada – became

---

<sup>15</sup> See Jull P, 1998: 'Indigenous "Stunts" Abroad', *Arena Magazine*, No. 33 (February-March 1998), Melbourne, pp 37-38. For background on indigenous internationalism, Jull P, 1998: 'First world' indigenous internationalism after twenty-five years', *Indigenous Law Bulletin*, Vol 4, No 9 (February 1998), Sydney, pp 13-16; and Jull P, 1999: 'Indigenous Internationalism: What should we do next?', *Indigenous Affairs*, 1/1999 (January-March), International Work Group for Indigenous Affairs, Copenhagen, pp 12-17.

involved with peoples and problems, and leaders and ideas, whom they had not previously known. Everyone seemed to have something at stake. Peoples or regions negotiating major restructuring – as in the regional agreements across large areas of the north of the country – really were rewriting the constitutional structure of the parts of the country. That is, they were bringing peoples and places from moribund or passive or sullen colonial status on the fringe into full active political and socio-economic participation in Canada.

Quite simply: Canada is now a different country. For instance, instead of having the northern two-thirds of the country cold and numb and silent and assumed empty, it is now a busy patchwork of peoples, projects, cultures, and languages. Of course, much of that is not new, but it is newly accessible to the rest of us through media and formal networks. One cannot under-estimate the impact on Canadians over the years of the televised national constitutional conferences between indigenous and government leaders: the French and English simultaneous translation facilities were one thing, but the third booth for Inuktitut, the language of the northern third of Canada, astonished and impressed many.

But the change in Canada permeates the whole political culture. It is sad but true that the so-called ‘native movement’ has transformed Canada while it has only begun to transform ‘native’ Canada. The problems accumulated from generations or centuries of marginalisation take longer to heal. Canadians as a whole, meanwhile, have gained confidence and breadth from the experience of listening to, learning from, and dealing with Inuit, Indian, and Métis peoples.

## **Conclusions**

Canada was a confused and misled failure in indigenous affairs, producing generation after generation of bitter and socially disadvantaged people. It has not overcome the resulting problems by many means – that could take a generation or more – but in recent years it has offered those people new hope, new opportunities, and the means to secure their political and cultural identities. Now that the basic psychological, social relations, and political issues are no longer in dispute – but only the best way to implement them – everyone’s energy can focus on immediate needs.

The impediments and solutions to indigenous problems whether in Canada or Australia are not primarily legal – they are political and social. Political will and moral energy can make use of varied resources and can also clear obstacles. In Scandinavia and Canada and USA old documents and 18<sup>th</sup> century treaties have been ‘rediscovered’ in recent years to help move things forward. The researches of Henry Reynolds and others in Australia reveals that this country may also have more such hidden precedents than has been previously recognised.<sup>16</sup>

---

<sup>16</sup> For instance, in Reynolds’ *Fate of a Free People* (Penguin, Melbourne, 1995) we learn that Tasmania almost certainly had a black-white treaty in process when it was overtaken by events, and in his *The Law of the Land* (Penguin, Melbourne, 1987) that the British imperial authorities were pursuing the same treaty-making and indigenous land protection ideals in parts of Australia as they were in North America.

The sort of policy agenda which was emerging in Australia some years ago – through the work of the Constitutional Centenary Foundation and the Reconciliation council,<sup>17</sup> and through the joint ATSIC, Reconciliation, and Human Rights Commission work on the ‘indigenous social justice package’<sup>18</sup> – is not a passing fad. Rather, it is the main current of Western culture and civilisation, of international organisations’ standard-setting, and of practical progress in an impassioned and often bitter sphere of social and political relations. These things flow naturally from the international bodies and agreements which Australia has been helping to create since 1945. They are part of the post-war legacy of rejection of racism and of the subjection of peoples whether by colonial powers or new tyrannies.

Indigenous rights, recognition, and reconciliation are not a whim of one or other political party. They are appropriate to all parties. Overseas the indigenous policy agenda has been carried forward by liberal, conservative, and labour parties; by Republicans no less than Democrats; by coalitions of left, centre, and right. In the Whitlam-Fraser years there was some bipartisanship in Australia on such matters. Talking with many Australians it is clear that there remains such an underlying consensus. In Canada, governments were slow to recognise that underlying public mood, but once they got the message, they acted. Racial reconciliation and accommodation are minimum requirements for an advanced country in the modern world. Australian politicians who play fast and loose with the moral standing of their country in the world are unlikely to be long treated kindly by their own citizens or by history.

\*\*\*

---

<sup>17</sup> E.g., CAR-CCF, 1993: *The Position of Indigenous Peoples in National Constitutions: Conference Report*, AND, *The Position of Indigenous Peoples in National Constitutions: Speeches from the Conference*, June 4-5, 1993, Council for Aboriginal Reconciliation, Canberra, and Constitutional Centenary Foundation, Melbourne. See also Brennan F, 1994: *Securing a Bountiful Place for Aborigines and Torres Strait Islanders in a Modern, Free and Tolerant Australia*, Constitutional Centenary Foundation, Melbourne.

<sup>18</sup> For the three reports representing the basic consensus of that work see, in order of their publication in March-April 1995, [1] CAR, 1995: *Going Forward: Social Justice for the First Australians*, A Submission to the Commonwealth Government from the Council for Aboriginal Reconciliation, Canberra; [2] ATSIC, 1995: *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures*, Native Title Social Justice Advisory Committee, Aboriginal and Torres Strait Islander Commission (ATSIC), Canberra; [3] HREOC, 1995: *Indigenous Social Justice, Vol. 1, Strategies and Recommendations*, Submission to the Parliament of the Commonwealth of Australia on the Social Justice Package by Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Canberra.