

Published version is Jull P, 2000: 'Maimed Rites', *Arena Magazine*, No. 45, February-March 2000, pp 19-24 (in Jull P & Reinke L (eds): *Living Indigenous Nations*, Special issue of *Arena Magazine*, No 45, February-March 2000.)

Draft for *Arena Magazine*

December 14, 1999

Maimed Rites

by Peter Jull

Maimed Rites

Australia's entry into a new century and millennium could have been so different. Instead of deep civic acrimony and collective failure on projects of renewal such as a package of constitutional reforms, an 'aspirational and inspirational' national constitutional preamble, and indigenous reconciliation, there could have been a sense of fulfilment and new energies released. Instead? A sales tax.

Of course, some sort of paper may be signed on indigenous affairs, even if it goes straight to oblivion before the grinning political faces appear in next day's press. The failure of national political leaders makes visible some deeper currents in indigenous policy. For instance, the public and many commentators have become actively engaged in shaping a positive national consensus for indigenous recognition and rights. Also, a dozen or more indigenous leaders have become recognised spokespersons of sections of Australian public opinion no less than representatives of indigenous opinion, and many more at regional and local level – often to their own surprise.

Social researcher Hugh Mackay in his new book *Turning Point* says (pp 129-30):

'Considering the long history of prejudice and hostility between whites and blacks, it would take very little to plunge our society back into a morass of racism directed at Aborigines. Weak or ambiguous leadership on the issue would be enough to do it. This is the moment for national leaders, across the political spectrum, to add momentum to the community's wish to see justice done.

...

This is not America. We do not have a "race problem" which is numerically large. Aborigines are one of the smallest cultural and ethnic minorities in our society. If we can't find a pathway to reconciliation between the 98 per cent and the two per cent, there is no hope for us. The way we define that pathway, and the speech with which we move along it, will be the measure of our civilisation.'

Indigenous issues and politics are not an unknown or unknowable context. On the contrary, much can be known by comparison of Australian experience with that of other 'first world' countries, both English-speaking liberal democracies with which we have most in common – New Zealand, Canada, USA – and the closely related countries of north-western Europe with their Inuit and Sami peoples – Denmark, Norway, Sweden, and Finland. Russia in its vast expanse is condensing into a few

years an indigenous policy search and era of environment-indigenous-development conflict which Australia, Canada, and USA experienced in their own enormous hinterlands over much longer. The parallels are all too obvious.

But one of the common elements in finding the way ahead in indigenous policy in all countries has been a blundering in the dark, a dark made of equal parts ignorance and shame. Now those other countries have admitted their problems and are networking among themselves formally and informally to accelerate improvements in indigenous-white relations, as in the Circumpolar movement. Australia has the benefit of their experience free for the looking, or can fall further behind as their synergy pushes them quickly ahead.

Whole Problems

The politics of indigenous renewal are a coherent whole. Whatever facet may appear first, it is part of a lump of issues which can only be successfully addressed as a whole. Indigenous people may be frustrated by inadequate or insensitive public services, be outraged by threats of pollution to food sources of sea or land from a new project, or resent physical intrusion or exclusion by outsiders, but once their rallying for action begins it quickly embraces a range of issues. Indigenous people are peoples, with collective assumptions, aspirations, group dynamics, and the desire to maintain their identity as a community. The issues, disadvantage, and social discrimination which mark them as groups, plus their strong sense of history and pre-history, would make them natural political communities with or without further factors like traditional cultural grouping and language.

When they organise in contemporary political ways, they may re-shape old forms or build new coalitions or groupings. Sometimes this upsets outside sympathisers who may consciously or unconsciously romanticise the indigenous past. It also attracts the pseudo-intellectual ire we see in middle-aged white men gathering to tut-tut about young Aborigines in weekend forums or the pages of *Quadrant* or over dinner with inter-state visitors in the Northern Territory cabinet's favourite eating places. Aborigines and Torres Strait Islanders will not be frozen in time. Indigenous nations have been adapting to new realities forever, and throughout the era of white settlement – it is the only way they have survived and will continue to survive.

Bemused outsiders may be unaware or deny the relevance of the countless studies on indigenous-white relations and social change. As Robert Manne and others have pointed out, Australia still suffers a hangover from Cold War disputes. It baffles newcomers to find a country where serious politicians, including the present prime minister, dismiss calls for betterment and reform as forms of self-loathing or mawkish 'black armband' putdowns of one's home. Surely self-appraisal and self-renewal accompanied by principled self-improvement are the core values of the Hebrew prophets, Greek philosophers, Christian religion, and humanist and religious traditions flowing from them. They are the small change and daily habit of our accumulated civilisation in everything from sport to public policy to child-rearing to moral identity. Punch-drunk survivors of old and now forgotten political wars and domestic political 'traditions' abound on both sides of Australian politics, but are doing more harm than

good. Indigenous matters, both current and historical, have attracted more of such misdirected energy than have most subjects.

Self-determination

The Howard government's attack on 'self-determination', the pre-Howard term for national indigenous policy, appears to be an attack on an ideal, a goal, and a public relations term of his predecessors. Certainly the mish-mash of 'welfare colonialism' (as anthropologist Jeremy Beckett calls it), self-management programs, and continuing official controls which have been the Australian indigenous reality for many years have fallen short of self-determination as understood in the world outside Australia. The absurd media and public debate on self-determination in Geoffrey Partington's 1996 polemic, *Hasluck vs. Coombs: White Politics and Australia's Aborigines*, gave us early warning on the shallowness of élite understandings, not to mention talkback radioland. It studiously misread and misunderstood the writings of Dr HC 'Nugget' Coombs (but see my article in *Arena Magazine* No. 20), and gave an intellectual patina to the now full-blown federal government approach of using unhappy socio-economic outcomes against indigenous peoples and their basic rights – political rights, land rights, any kind of rights. Because our policies have failed, the line goes, indigenous peoples must simply be made just like us and no more whining about difference, culture, and rights. Like bad children being lectured on being more 'responsible', such stuff may make the lecturer feel better. This approach reached a high point on July 29, 1999, with the government's indigenous policy speech to the United Nations in Geneva. Delivered by Senator Herron, the speech wallows in the degradation of fellow citizens in a pornography of local distress, perhaps a first for a 'first world' country. (Speech on-line: http://www.atsia.gov.au/fr_press.html)

Indigenous peoples remain marginalised or under the control of others – or they assert themselves. While officials may complain that communities lack energy for self-help, they rarely welcome activism when it comes. Such purposeful activist energies are probably essential to progress. However, compared with other countries, Australia has had a reasonable, focused, and practical indigenous political movement.

Process and Progress

This politically smart tendency reached a high point in 1994-95 in the internationally unprecedented 'indigenous social justice' exercise. As part of the follow-up to the *Mabo* decision, three indigenous-controlled offices – the Council for Aboriginal Reconciliation (CAR), ATSIC, and the Human Rights Commission's (HREOC) indigenous social justice commissioner – jointly held two rounds of consultations around the country and intensively workshopped feedback and expert input to produce three remarkable reports in March and April 1995. At arm's length from the government, this process brought together indigenous leaders in a consensus-shaping program which combined political realism with the best available advice. The three reports are in many libraries and are now on-line through CAR's social justice library: CAR's *Going Forward: Social Justice for the First Australians*, ATSIC's *Recognition, Rights and Reform* (which would be the best term for the whole social justice process), and HREOC's *Indigenous Social Justice: Strategies and*

Recommendations (now reprinted in full in *Australian Indigenous Law Reporter* Vol. 4, No. 3, 1999).

The three reports were agreed on major points but with different emphasis (see *Indigenous Social Justice*, ANTaR Occasional Paper 2). After discussing public services and living standards, the reports turned to constitutional rights and processes, regional agreements, the special case of Torres Strait, indigenous marine rights, and indigenous self-government. They also noted the two main forms of international work: focused international standard-setting as at Geneva and the general sharing of practical experience among countries. The reports were thoughtful, clear, practical, and brought Australian indigenous policy into modern times. They were also process-oriented and designed to bring public opinion, official possibilities, and indigenous needs along together.

One major point was the need for federal government leadership on indigenous issues. During the community consultations no item had been more heated than indigenous views of the way states and the NT handled or mishandled funds for indigenous purposes. While states rights advocates are correct in part when they say that they have been in charge of land matters historically, there is an equally strong exception in British Empire tradition: indigenous rights, including land rights, are protected at a higher level of authority by national governments or, earlier, the government in London. Despite the frequent ineffectiveness of that separation of functions – a separation based on recognition that land development interests will do scant justice to indigenous occupants – it remains the founding principle of indigenous-white relations in USA, Canada, New Zealand, and elsewhere. It is no less poignant internationally today, e.g., indigenous peoples in European Russia and Siberia, Sami in Scandinavia, and Inuit Greenland, where national governments must override regional economic interests and ethnic prejudices to protect such peoples.

Henry Reynolds' breakthrough research has recovered the same policy intent in London towards Australia at various periods, and moves towards a treaty which were overtaken by events in Tasmania. (See Reynolds' *Law of the Land*, 1987, and *Fate of a Free People*, 1995.) Many Australians believed and expected the 1967 referendum to see a clear federal takeover of indigenous affairs from reluctant or ill-performing states. The need is even greater today because far more indigenous people understand and refuse to accept their situation.

The North

Across much of Australia today there are disaffected groups of people distinguished by race and disadvantage from other citizens, peoples clear on their own history and traditional areas but marginalised across large stretches of the national territory in unresolved or disputed legal and political arrangements. This is clearly an unfinished country with an unfinished nationhood. Many Australians wish to embrace their indigenous fellow-citizens and move forward, but governments always seem to find new arguments or 'problems' to complicate progress and maintain indigenous alienation. This seems a grotesque distortion of 'the national interest'.

In hinterland areas where ingrained habits and institutions may not be deeply entrenched, and where something of a go-ahead innovative spirit may remain, the fluidity of indigenous-white frontiers provides opportunity for creative political and constitutional realism. How to deliver services in sparsely settled areas, to peoples outside the country's majority culture, in a manner relevant to their needs and conditions, and in order to avoid the failures and injustices of the past? Not surprisingly such 'northern territories' are everywhere in the 'first world' proving to be case studies in practical reform.

The national interest remains clear in the Northern Territory and Torres Strait thanks to remaining federal jurisdiction in whole or part. NT terms of statehood will have to be passed by Parliament in Canberra. Section 121 of the Constitution reminds us that Parliament may 'make or impose such terms and conditions ... as it thinks fit' in legislating any new State constitutions. The 21st century faces us with a world full of demands for far greater sensitivity to cultural and racial issues than European peoples have hitherto shown, while the 20th leaves behind many painful lessons in the NT, Australia as a whole, and the world. It should be unthinkable to adopt a 19th century constitutional model for the NT, the same 'one size fits all' model which has seen indigenous peoples marginalised and brutalised all around Australia since 1901. In 1998 the NT public defeated such a model in a referendum, while Aborigines held their own constitutional conventions, most notably at Kalkaringi and Batchelor, to work towards a proper constitutional framework which included them. With the NT ex-premier who authored that attempt now president of the Prime Minister's party, one may worry about the prospects. (See also my article in *Arena Magazine* No. 37.)

In Torres Strait the Islanders are working steadily towards new regional arrangements for local and regional government, sea rights, land rights, marine management, and a dynamic new era which embraces all the Strait's residents. Energy and purpose are palpable ('Mabo revisited', *The Age*, 16-11-99). There are many successful hinterland models working overseas in countries just like Australia which have already undergone the same numbing debates and political fretfulness about innovation, national unity, and 'race-based' institutions. Their impact has been to include peoples and regions genuinely in national society, ending grievance, isolation, and disaffection. Surely that is what *reconciliation* is all about.

Three Stages

The post-war pattern in Australia, as elsewhere, has seen three phases or generations of indigenous development to date. The first has been a general shame in the non-indigenous community about persisting discrimination as well as poverty and disadvantage among indigenous peoples, matched by rising education levels and anger among indigenous peoples. In this phase there are many ideas, much talk, and some rather naive analyses as a country struggles to come to terms with its own history and with the hypocrisy of official talk about equality and opportunity. Australia did rather well in that phase, producing both the 1967 referendum on constitutional powers and the focussed and principled movement for a national indigenous Treaty. Unfortunately many Australians and some politicians today seem to have reverted rhetorically to this era to avoid action in the present. What was once

a time of innocence, however, is now *false* innocence. We know better and should do better.

In the second phase, real politico-constitutional reform, such as Treaty movements and proposals for recognition and structural change, gather enough accumulated support and understanding to become serious policy options. A new sense of the workability of such proposals, of solving old problems with some accommodation and innovation, helps see things through. In Australia this phase was underway when the 1996 federal election disrupted it prematurely, its highlight to that date having been the work on the indigenous social justice package (discussed above).

In the third phase the earlier phase two political and legal breakthroughs and changes in social and political cultures are normally consolidated. Now, community-based political movements, often led by women, demand that the tangible improvements which had been the fuel for widespread indigenous consensus in phase two on structural change begin to show real results. It is this phase which the Howard government appears to misread or mislead gleefully and turns against phase two reforms which in Australia have not yet occurred, or have been truncated. The difference between phases two and three is emphasis and immediate priority, not an *either/or* perspective. *Both* recognition and political reform from phase two *and* phase three administrative improvements are needed.

A good example of the third phase is the Queensland indigenous women's task force on violence released on December 1, 1999 written by chair Dr Boni Robertson with 49 other women working through extensive local consultations (on-line: <http://www.qldwoman.qld.gov.au/>). In an executive summary the report says (xi-xii):

'The history of race relations in Australia is one in which Indigenous people have been subjected to forms of violence that, until recently, were unknown to many non-Indigenous Australians and as a consequence, the atrocities inflicted against Indigenous people have only recently been fully exposed. Colonisation and dispossession were factors identified throughout the consultations as being central to the current alcohol and drug abuse, violence and dysfunction witnessed in Indigenous Communities.

Indigenous people generally have been profoundly affected by the erosion of their cultural and spiritual identity and the disintegration of family and Community that has sustained relationships and obligations and maintained social order and control.

While some Indigenous peoples were able to escape the past, whole families and Communities are now fighting to address the consequences. Appalling acts of physical brutality and sexual violence are being perpetrated within some families and across Communities to a degree previously unknown in Indigenous life. Sadly, many of the victims are women and children, young and older people no living in a constant state of desperation and despair.'

The pattern in other countries has been to clear space both attitudinally and jurisdictionally for indigenous structures in the nation-state and then in the next phase to make them effective and responsive. The accumulated problems they face are such

that the work may burn out a generation or two of leaders, and implementation may be troubled, but there is really no alternative. Across northern North America from Greenland to the Bering Strait there have been many innovative approaches to 'capacity building' and phased implementation with useful lessons for others.

Belief and Disbelief

In February 1996 the then chair of ATSIC, Ms Lowitja O'Donoghue, said in a public speech opening an Aboriginal-islander constitutional conference in Adelaide that Australian governments threw money at indigenous social ills which they hardly believed it possible to relieve. In August 1999 at a Liberal function in Adelaide the Prime Minister dismissed a question on Aboriginal health saying that it had taken 150-200 years to create the problem and would take as long to heal it. With such cynicism in public policy-making, failure is almost guaranteed.

Indigenous rights and political renaissance are a world-wide phenomenon. When the Howard circle say they are offering a 'new' approach with their emphasis on social services, they are either deluding themselves or taking the rest of us for fools. Their 'new' approach is simply the same old mix of band-aid programs and neo-Victorian exhortation which failed everywhere else and led, through failure, to a move to recognition of indigenous group rights, including land and sea rights, and self-government. Their 'discovery' of the evils of welfare dependency is merely an attack on the band-aid placed there in desperation by successive governments. It does not heal the wound below.

The notion that treating indigenous peoples fairly and recognising their rights is a bit of radical Left whimsy is astonishing to a foreigner. In other countries, including USA, Canada, and New Zealand, governments of the Centre and Right have been no less committed to indigenous reform. The reasons are simple decency, respect for principles of common law, e.g., actual occupation and use of territory, and a knowledge of history. Why is Australia so different? Or is it merely that the *Mabo* decision of 1992 is taking some time to sink in? Until then many Australians made *terra nullius* as much a moral and social imperative as a legal fiction. Meanwhile, Canberra often seems to have shut down intelligent discussion in favour of adolescent misappropriation of bits and pieces for disinformation effects, as with Noel Pearson's musings on Cape York problems.

Making Progress

The Australian political culture is geared to quick fixes and impatience in policy-making, exacerbated by short 3-year electoral cycles. The work of building trust and working through deep differences where indigenous and non-indigenous can hardly agree on basic facts, let alone a vocabulary of remedies, takes time. Establishing the nationally elected Sami parliaments in Finland, Norway, and Sweden was a big step, but now that they are fully functioning, their work of negotiating and implementing change with entrenched national bureaucracies and political attitudes is just beginning. Fortunately they can build on earlier reforms which equalised indigenous

and non-indigenous living conditions and opportunities to the highest standards on earth, even in remote, harsh, and Arctic conditions.

For those countries which liked to think of themselves as homogeneous it has not been easy to embrace the implications of a two-culture society. Nevertheless, Norwegian prime minister Bondevik, the Christian Democrat leader and himself a Lutheran pastor, told the Sami Parliament in Karasjok, September 28, 1999:

‘In recent decades there has been a growing awareness that the Norwegian state is built on the territory of two peoples – the Norwegians and the Sami. Thus, as a people the Sami have certain rights by virtue of their historical ties to the Sami areas.

...

It is important that the Sami parliament is given a stronger role in developing education. This will give Sami children and young people a firm foundation in the Sami culture, language and way of life. One of the objectives of the provision of the Education Act concerning the individual right to instruction on and in the Sami language is that Sami children and young people are enabled to retain, and reacquire, the language of their people.’

This is a long way from the NT government’s assimilation policies and abolition of indigenous language teaching. It also comes in a region where indigenous interaction with non-indigenous settlers, invaders, punitive expeditions, and piratical raiders has been going on for a thousand years. The Sami have not disappeared or assimilated, and Aborigines and Torres Strait islanders are no more likely to do so.

The Canadian experience is especially relevant to Australia because the two countries are so much alike. There the past 35 years have been a national negotiation of accommodation or reconciliation. Not a nice neat negotiation across a table, but implicitly – shouting through the media, court cases, protests, disputes over land and sea and other environmental issues, lobbying, and a great many other processes. Each moment or achievement – or failure – became a point in a further process. Over time the Inuit, Métis, and Indian First Nations have re-negotiated the political culture of the country. Canadians now live in a much roomier and more generous country, and have a much richer awareness of history than the sort of white development linear and narrow progression of times past. The accumulated problems are many but today there is hope, and reason for hope, in the reformed political and administrative systems of the country.

Next Steps

Someday soon the Howard-Hanson-Herron interlude in Australian indigenous affairs will be summed up in clever articles and books, just as it has already yielded a rich vein in political cartooning. It deserves international attention, if only as a unique attempt by a ‘first world’ country to roll back civilised values and the painful wisdom of accumulated experience in order to reinstate the old prejudice and crude ignorance of an earlier era. It is a cautionary tale for all countries.

To the wry amusement of Aboriginal leaders, the persistent awkwardness of the Howard government's first term in indigenous affairs has been replaced in the second by vigorous and skilful media management. Of course, none of that would be necessary if the government were not so inept or crude in its policies in the first place. Indigenous leaders are now stepping up to fill the political and leadership vacuum.

Patrick Dodson in August 1999 in his Lingiari lecture outlines a comprehensive approach to indigenous policy (abridged elsewhere in this issue), the type of approach supported by a major gathering on Australia's indigenous leaders two weeks later ('Unfinished business...', M. Kingston, *Sydney Morning Herald*, 16-9-99). They propose both a framework agreement and continuing discussion and negotiation process. Similar use of formal and informal 'political accords' to maintain, shape, and build consensus in such processes, as has happened in Canada, is discussed by Helena Kajlich (elsewhere in this issue). These are the types of approach which world experience has shown to be most effective in solving political grievances and addressing persistent socio-economic disadvantage.

The issue of relations between the continent's first peoples and the post-1788 population of voluntary and involuntary immigrants and refugees, i.e., all of Australia today, is not a whim or party trick of one or other prime minister or government. It is a matter for all residents and its successful resolution is the litmus test of Australian identity and nationhood.

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