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**Lines in Sand and Sea:  
Constituting and Re-constituting Australia's Northern Territory**

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# Lines in Sand and Sea: Constituting and Reconstituting Australia's Northern Territory

Peter Jull

## Introduction

As *northern territories* go, Australia's Northern Territory – 'the NT', in daily speech – is both very old and very new. The region's Aboriginal peoples' law, stories, and customs confirm them as being among the oldest living cultures on earth as do archaeological remains and rock art. For these peoples the region is very much the centre of the world – spiritually no less than culturally, linguistically, socially, and politically. But the phrase 'Northern Territory' implies that the region in question is 'northern' or 'out there' in relation to some other heartland, and a 'territory' which denotes a lesser political jurisdiction, one not yet fully organised or mature, a place where many large choices and institutions remain to be made. The term is Eurocentric, 'a White Man's term', found in a White Man's language. Many of the NT peoples agree on at least one thing: that the current NT constitution is unsatisfactory. This paper is intended as a contribution to discussions between and among those peoples, long-term, middle-term, or short-term, on future political arrangements.<sup>1</sup>

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<sup>1</sup> An earlier version of this paper titled *Lines in the Sand: Federal Implications of Statehood for Australia's Northern Territory* dated December 2006 was submitted to the Standing Committee on Legal and Constitutional Affairs, House of Representatives, Parliament of Australia, Canberra, for their inquiry into Northern Territory statehood and its Federal

The NT's modern constitutional evolution seemed to come to a halt with the defeat in 1998 of a referendum on a statehood constitution (Murphy 2005). However, the general topic has been revived now within the Northern Territory Legislative Assembly and among the wider NT public. As a result, on 9 May 2005, Australia's Minister for Attorney-General, Hon Philip Ruddock, MP, gave the House of Representatives Standing Committee on Legal and Constitutional Affairs in the Parliament of Australia terms of reference to inquire into *'the question of Northern Territory statehood, focusing on:*

1. *recent developments in the Northern Territory on the question of statehood, including any proposals to advance statehood; and*
2. *emerging issues which may have implications for federal arrangements.'*

The Committee held hearings in Alice Springs and Darwin in mid-November 2006 in seminar form. A further hearing was held in Canberra on 6 February 2007 to ask key federal ministries for any indications or

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implications by the Australian Centre for Peace & Conflict Studies (ACPACS), Uni of Queensland, Brisbane, Qld. 4072, AUSTRALIA. That version was posted on the Committee's inquiry website, <http://www.aph.gov.au/house/committee/laca/ntstatehood/subs/sub009.pdf>.

directions they might offer to the NT for the development of proposals for a Statehood constitution. At this latter meeting federal officials were almost amusingly unhelpful in avoiding the giving of any direction, while on the same day the NT minister and shadow minister for statehood met Attorney-General Ruddock who apparently made the same point, that is, if there was to be constitutional action, the movement and some real consensus must first come from the NT (Hansard 2007).

The terms of reference for the Committee inquiry – *'Federal implications of Statehood for the Northern Territory'* – offer a novel and useful approach to explore issues of political and constitutional development, both old and new. They highlight the fact that self-determination of regions is not *only* a natural democratic urge of all peoples and a 'right' in liberal democracies, but reflects back on the country, the federation, as a whole. If the discussions leading up to 1901 centred on commerce, national security, and racial anxiety, among other things, the list today includes much more because governments are active in so many more fields. Indigenous relations and 'reconciliation', human rights and socio-cultural diversity, shared national assumptions, low-level but persistent security threats, tourism, the environment, protection of 'dangerous' species and dangerous minerals like uranium are now part of the scene. Railway politics, resource development projects, and great world-class seaports – both real and imagined – light up political visions just as they did in 1900.

The creation of the first large new jurisdiction within the Australian federation after more than a century, and one in which a large population of Aboriginal peoples are the most permanent residents, is both an opportunity and symbol of new times – even of the new millennium. It is a fresh

challenge calling for cooperation and political unity in a country vexed and perplexed by 'reconciliation' issues. *National unity*, not an existing problem in Australia despite occasional loose talk on talkback radio, does have one dimension of importance for us: it is obviously about *inclusion* and, therefore, *inclusiveness*, not about trying to define *un-Australianness* or *un-Australians*. It is not about trying to *exclude*. Occasionally commentators and even politicians lapse into a patter wherein Aboriginal peoples in their ancient homelands become outsiders or migrants who have failed to move to the Big Smoke and fit in (see for example Megalogenis reporting on Reconciliation in *The Australian*, 6 May 2002).

This paper looks at the possibility for further constitutional development of the Northern Territory, drawing upon comparative examples and experiences from northern territories elsewhere in the world, including Canada's Northwest Territories, Alaska (USA), Scandinavia, Greenland, and Siberia. I will discuss the question *What is the national interest in the further constitutional development of the Northern Territory?* This subject "the national interest" is not always so obvious or clear as many may think. After all, discussion of the national 'self' too rarely occurs in a positive and expansive way, but is invigorating and optimistic compared with defensive or fretful mutterings about dangerous outsiders or would-be intruders. Australia, to its credit, invites full public political participation in many areas of constitutional reform. However, in the areas of indigenous, environmental and development politics and in the context of experience of northern territories, the more dominant legal questions have centred on *constitutional*

*politics*, rather than sheer issues of law.<sup>2</sup> The experiences – good, bad, or thought-provoking – in *northern territories* from Torres Strait and the Kimberley and Central Australia to the Arctic Circle hinterlands of the far Northern Hemisphere, provide many practical case studies in political and constitutional development, in reconciling cultures and outlooks. This paper focuses on the politics of constitutional development, and explores the potential for a necessary healing of relations between Indigenous peoples of the Northern Territory and the Federal and Territory governments in Australia.

### **What is the Northern Territory?**

The Northern Territory as seen by many settler Australians – and foreigners – is centred on a map by a red line (the Stuart Highway) running North-South — with the capital Darwin on the Sub-Equatorial seacoast and three other predominantly non-Indigenous population centres, Katherine, Tennant Creek, and Alice Springs, from North to South. The trans-continental rail link running in parallel was completed in recent years to Darwin and has long been a symbol of hope or development for NT entrepreneurs.

For the rest, the NT is a broad wedge of apparently empty land stuck into the top of the continent. It is bounded on East, West, and South by arbitrary straight lines in the

sand making no particular sense and creating difficulties between kin and amid language groups and cultures. This arbitrary Territory is a legacy of the British Empire and the Age of Steel. The maps of Australia or Canada or Africa with their many straight lines drawn by persons perhaps unfamiliar with the situation on the ground reflect the confidence and willfulness of empire in the 19<sup>th</sup> Century ‘age of progress’. A century earlier the European Empires were more mindful of ethno-cultural division and natural topography when drawing boundaries between British and American spheres in Eastern North America with their Indian ‘First Nations’ peoples (today’s Canada-USA boundary westwards from the Atlantic to the Great Lakes), and between Denmark-Norway and Sweden in Northern Europe with the Sami (‘Lapps’).

Although the NT has become iconic in its own right to Australians and people abroad – and not only because of travel promotions – this does not often seem to translate into any particular policy or political sentimentality in utilitarian national political culture. Rather, the region remains a functional bit of terrain for various national purposes – resource export earnings, pastoralism, shipping, rail, military. This is unfortunate for those living in the NT – Indigenous and non-Indigenous alike. National hinterlands usually hold some special cultural, moral, and political appeal which gives them particular benefits and status, and a somewhat honoured, albeit episodically heard, voice in national affairs. The NT seems to have missed out in comparison with Alaska, ‘Lapp’-land in Scandinavia, Greenland, Siberia, and Arctic and Sub-Arctic Canada’s three northern territories (which cover 40 percent of that country’s land area).

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<sup>2</sup> While these pages deal with the more obvious issues of constitutional topography and landscapes, the deeper dynamics and ‘geo-morphology’ are dealt with, from a non-Indigenous intellectual and cultural perspective, by Dr Anne Brown in a book chapter, ‘The status of Indigenous Australians’, which I highly recommend (Brown 2002). I have drawn on her thinking, research, and writing. I am also grateful to ACPACS Director, Kevin Clements, and other ACPACS staff and students, and several of my former indigenous/political studies students.

Fifty percent of the NT is now Aboriginal owned land including more than 80 percent of the NT coast. Aboriginal people make up more than half of the longer-term population, the total NT population fluctuating near 200,000, with the Indigenous share under-counted in censuses. The NT consists of the ancient landscapes and cultural or linguistically bounded districts of Aboriginal peoples who are said to have the oldest living cultures on Earth. In Australia the Aboriginal peoples live from Pacific to Indian Oceans, and Equatorial to Antarctic Seas, across almost all of Australia. (Torres Strait Islanders living at the north-east corner of the continent are a Melanesian culture, Australia's other Indigenous grouping.)

The Indigenous NT historically and pre-historically is a patchwork of peoples and homelands, of societies with their own relations from marriage to trade to mutual responsibilities to conflict. These traditions are timeless and embedded in creation accounts, but rock art and other archeological sites, as well as living ceremonies, give even rank outsiders a glimpse of the richness and depth of social history. As these peoples and societies relate to the 'new' white man's NT, it may be for convenience or opportunity, but it should not come at the expense of an erosion of cultural traditions. Some Australians believe that integration of Aboriginal peoples within the wider Australian polity inevitably requires their assimilation. But many Aboriginal people do not aspire to assimilate nor to be rendered culturally invisible. A typical misunderstanding followed a recent speech by Northern Australia statesman Patrick Dodson.

*...Dodson's assertion that Aborigines should be allowed to cherry-pick the bits of modernity they like, while insisting the Government*

*simultaneously fund a nomadic life, simply cannot be laughed off. Unfortunately there are many believers in the indigenous community and beyond, in this a la carte approach to integration.*<sup>3</sup>

Of course, our own British and Irish and European cultures, like all others, have 'cherry-picked' this and that which has seemed useful or interesting; that is how cultures evolve through time.

The future of the Indigenous settlements, camps, wider districts, and local and regional authorities within the NT is the biggest question facing constitution-makers, and one where we cannot see very far down the road. But if any NT constitution is going to work for its Indigenous users, or be locally acceptable, or solve the problems with which the media daily bombard us, it cannot be devised or imposed by outsiders. It must have the consent of Indigenous peoples.

Meanwhile, the NT as presently defined on the map and equipped in constitutional legislation, may mean little or nothing to most Indigenous people. There may be many people in Central Australia who think the Centre and Top End would make sensibly separate territories. (Central Australia was a separate territory from 1927 to 1931.) To some or many it may seem an arbitrary imposition by outsiders, a body of irregular visitors or 'blow-ins' telling them what to do, or what not to do, but with lasting effect on their lives. If the NT authorities wish to become 'naturalised' within the social-territorial reality of the expanse they are said to govern, there is much to be done. A real political settlement – an agreement on what basis to share the land and its governance and set its rules – in

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<sup>3</sup> *The Australian*, 'The Nomadic ideal is killing the indigenous', Janet Albrechtsen, 13-12-06

which the Indigenous peoples are one side of the table is the first requirement. The NT today is not a coherent entity in the way in which the State of Victoria, or an Aboriginal district within the NT, might be. It is an arbitrary space in which at various places, various authorities and languages are used or followed, with no overall reality except in the minds of map-makers and outside decision-makers. One could almost say: *The NT doesn't exist!* Not yet, at any rate.

### **What is a 'northern territory'?**

A 'northern territory' in Australia or elsewhere is a hinterland region. *Vis-à-vis* national capitals it may sometimes be only a word on a map with little or no nation-state presence except perhaps a scientific or weather station or military outpost. The 1939-45 war truly focused the modern 'northern territory' experience, and not only in Australia. Instead of powerful outsiders come to rule or bring new gods or expert domination of one sort or another, or plans to use the region for their own economic values, suddenly large numbers of ordinary democratic and/or egalitarian persons arrived – plain soldiers, nurses, sailors, air crew – people who had less hierarchical disdain for the Indigenous locals and would share a cigarette. For many Indigenous persons this was a first taste of positive membership in the nation-state which claimed their adherence. A whole new era of political and governance issues emerged as a result.

Since then a 'northern territory' is usually located between the national past and future. Its present is typically a hybrid containing aspects of the national past, often the frontier experience, the time of early contact between a national majority people and the earlier inhabitants; a strong presence of those earlier inhabitants. Those peoples are often the Indigenous peoples of the larger

continental or nation-state society. They may be experiencing social changes with grim side effects, but those are usually their own reluctant choice over the few alternatives available. In this dynamic context of Indigenous and non-Indigenous experimentation and change, new social, cultural, economic, environmental, and political forms are evident and emergent for those who will look. The impatience of the old-fashioned 'gold rush' mentality – 'let's get rich quickly' or 'get things done' in the absence of constraints of older settled regions – is no longer credible or workable.

This sort of region may not bear a convenient label like the Northern Territory. We see it in Western and Northern Queensland (including Torres Strait), much of Western Australia, much of South Australia, and Western New South Wales. We see it not only in Canada's former two, now three 'northern territories' (Yukon, Northwest Territories, Nunavut), but in another huge region of the mid-north encompassing parts of seven of the ten Canadian provinces. We find it again in Alaska, parts of Hawaii, and parts of the Western continental USA; in far northern Eurasia, including Scandinavian 'Lapland' (Sápmi, the land of the Sami) and the regions of Northern peoples from the Sami ('Lapps') and Nenets ('Samoyed') in the west of Northern Russia to Chukchi and Inuit in the far north-east. Arctic Siberia's Yamal peninsula and region is the ultimate conflicted *northern territory* today, a zone well worth study (see Osherenko 2001; and online Yamal sites). In the northern North Atlantic, Greenland is a large, Inuit language-speaking and now self-ruling northern territory, while the European Dark Age-settled regions of the Faroe Islands, Shetland, and Iceland have shown political ambivalence and conflicted development towards empires and later nation-states

asserting sovereignty over them no less than non-European Indigenous peoples have done.

*Northern territories* enter our written records c. AD 890 with King Alfred the Great in England. One Ottar, a Norwegian entrepreneur who had settled among the Sami ('Lapps') of the high latitudes, 70 North, near the present-day city of Tromsø, was visiting Alfred's court. The King had Ottar's story of those far places – right around Arctic coastal Europe to the White Sea – recorded with interest, despite having a slighting opinion of the boastfulness and claims of Ottar – or *Ohthere* in Anglo-Saxon.<sup>4</sup> These northern regions are very different from the 'Barbarian' lands against which empires like China, Byzantium, and Rome built walls for protection. In our post-medieval and modern 'northern territories' the Indigenous peoples represent minority groups dispersed over extensive territory, and were little or no threat, but in possession of lands or waters, or furs, fish, forests, or herds sought by large populations farther south. In recent times the mineral, oil and gas, and hydro-electric potential of these regions has attracted capital cities' attention, not to mention their potential for military bases (including sub-marine, missile, and anti-missile installations), troop concentrations, military exercises, etc.<sup>5</sup>

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<sup>4</sup> See Storli 2004. Ottar's tale as recorded by Alfred is found as an appendix in Jones, 1984.

<sup>5</sup> Among the stranger trivia of 20<sup>th</sup> Century American warfare are that novelist Jack Kerouac worked (washing dishes) on a ship in the convoy which militarised Greenland in July 1942, carrying the materials and men to build Søndre Strømfjord (Kangerlussuaq) air base. In 1956 his friend, poet Allen Ginsberg, worked on a ship resupplying the Cold War bases in 'Eskimo' (Inuit) Alaska from San Francisco and Seattle, using the time aboard to write his greatest work *Kaddish*, while his famous work, *Howl*, was published, a cultural sensation greeting his return. A reading of their diaries and other comments turns up nothing of interest on our subject of *northern*

But more quickly than the nearer Northern European mainland region of Sápmi, the Norse settled the Faroes, Shetland, Orkney, Iceland, Greenland, and, seasonally at least, part of Atlantic-Arctic Canada by AD 1000. Even so, it took another thousand years for any of these pre-inhabited regions to re-merge as distinct political entities running their own affairs and recognised by others - Iceland in 1944, Faroes in 1948, Greenland in 1979, Nunavut in 1999, and Nunatsiavut (Inuit coast of Labrador) in 2005.

The implicit verbal sense that a 'territory' is somehow less than other political forms – or is merely unformed, politically – troubles some people who would like to see the Northern Territory renamed. Others may argue pragmatically that 'territory' maintains a proud frontier tone and will also attract tourists. An indigenous language name may be most appropriate for a newly (re-) constituted region, of course.

## **Northern Territories and Cultural Conflict**

The all-out physical conflict and massacre of times past in some northern territories is no more. Few countries escaped it, although some, such as Russia, were so large that whole peoples and their herds could move out of the way of incoming whites and 'disappear' into safer regions. Some of the Nenets of European Russia have only come in from the cold in very recent years on their Arctic coasts.

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*territories*, unfortunately. In similar vein, what we might give today to know the thoughts, actions, notes, comments, flirtations, whatever, of the great (and 'scandalous') French poet Arthur Rimbaud on his brief 1876 visit to Darwin in flight from the Dutch East Indies!

Nevertheless, violence and conflict take many forms. Where one people or various peoples are living according to the ways, customs and languages of old societies, and suddenly encounter new peoples with new technologies or economic activities which threaten their economic livelihoods, resource base, or their social values the stage is set for serious trouble. Although such a region may have the required conventional history book written about it, such books can be misleading in such regions. The logical thread of a book may be deceptive. With high turnover of non-Indigenous population and fluctuating but dominant national policies and budgets, the real thread of history in Australia's NT is the oral memory of Indigenous inhabitants (see for example Bauman 2006). Sometimes modern historians like Roberts (2005) are able to winnow out from scarce and scattered records some surprising results. See also Bjørklund (1985) on Norway's Arctic Ocean Coast, a book which won the national book prize and provided revelations about national identity to Norwegians in both North and South alike.

The oral memory of Indigenous and other oral peoples, for example the Irish, is very long. In contrast, the institutional and political memory of *northern territories* is not only very short and discontinuous, but non-Indigenous politicians at national and regional levels would make it even shorter, urging Aboriginal peoples to forget the past and be 'just like us'. (The obviously self-serving nature of such requests, and the expected 90-second political attention span of the public in the TV era, do not make constitutional or political reform in the Northern Territory any easier in the face of that Indigenous oral memory!)

Since 1945 the international 'northern territory' has, at its best, seen flexible,

negotiable and adaptable arrangements, in which European and Indigenous cultures have addressed anew the basic issues of the first historical encounters in the Americas and Pacific, and in the 'Old World' of northern Eurasia - creating a *New World* indeed after the horrors of Depression and War. To do this they have had to overcome, heal, ameliorate, reconcile, or at least begin such processes in relation to some predictable problems in mutual or Indigenous or non-Indigenous perception. These typical problems and characteristics in post-1945 northern territories have included disputed identity as settler frontier *vs.* indigenous homeland, disputed social and cultural norms (including language and cultural rights and use), disputed use and ownership of land and sea territory, and resources. Individual rights of newcomers and settlers are often celebrated in the dominant media, while collective rights of indigenous peoples are publicly denigrated and officially dismissed. There is a pervasive newcomer belief that they and their circumstances and dynamics are unique (whereas, unfortunately, the national population and its settlers *vis-à-vis* the indigenous locals, repeat endlessly a general banal pattern of disputation and misunderstanding). The isolation of northern settlers from the southern heartland's evolving political culture creates further problems, both in terms of social attitudes and particular areas of knowledge, including differences between perceptions of the northern territory as national/sub-national treasure house *vs.* self-determining region or peoples. Northern settlers' ideology sometimes seems 'beyond the pale' by national standards; and there may be an eventual need for national governments, parliaments, or parties to broker northern reforms and accommodations for social peace (or to re-enter the scene to knock heads together).

These are variations on the initial problems of first white/British settlement at Sydney Cove as at Port Essington,<sup>6</sup> but while in those cases the British thought they had answers, both the local people and the new arrivals today have much more experience – and less reason to re-make painful mistakes (Clendinnen 2003; Atkinson 1997).

## **The National Interest**

The basic question facing Parliament and the people of Australia whom it represents is, '*what is the national interest in the further constitutional development of the Northern Territory?*' This is a much larger question than the precise legal and constitutional mechanics by which that national interest is served, or achieved by Parliamentary enactment.

The situation in World War II when Australian authorities feared the disloyalty of peoples of the northern coasts – surely an unconscious official recognition of the violence and brutality of much white settlement in the region – must not recur (Hall 1989; Roberts 2005).

The principal and traditional interest of national governments in the upgrading or sharing of political status with outlying or 'new' territories is to confirm political equality and loyalty in implicit exchange for the benefits of a wider national political economy and citizenship. Obviously this is only achieved in a liberal democracy through the consent of such regions and their peoples rather than any imposition – or appearance of imposition – of unfamiliar or inappropriate structures.

One of the challenges is to reconcile competing models for political structures, whether they follow a model similar to shires, tribal governments or indigenous urban authorities. In her insightful and optimistic book, *White Out*, Rosemary Neill (2002) ended with a vision of how the Northern Territory's problems could be solved, in effect, by the good old Australian settler model incorporating and coming to the aid of Aboriginal peoples and communities. The trouble with this argument is that the North is not settled by settler Australians, but by Indigenous peoples. Everything is culturally and politically wide open except in some few towns on the Stuart Highway, and even within these communities, the Aboriginal population is often at extreme odds with white authorities about basic issues. This highlights the problem of disputed legitimacy over appropriate governance systems as well as the problem of competing institutional legitimacies between indigenous organisations and governments. Those valued as the most legitimate in a local context are sometimes those least formally 'credible' to capital cities. The eventual NT, or such territories or states as succeed it, may have distinctly different political economies, if only because they are creations of the 21<sup>st</sup> Century, not the 19<sup>th</sup>. The idea that the Aboriginal peoples should be a welfare sub-class in a white man's brave new world is not attractive to anyone.

In the past year – and to a lesser degree all the while since June 2001 – there has been constant and vehement public, media, and official hand-wringing about violence and social dysfunction in the Aboriginal NT and other areas of Australia. There is not even a basic consensus on the roles of government – NT or federal – with each side apt to blame the other for unhelpfulness. Canberra has

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<sup>6</sup> A site on Coburg Peninsula north-east of present-day Darwin, first settled in 1824 in the hope that it could become the basis of an important British Empire trading port.

said it is not responsible, even as it turns around and proclaims detailed programs and experiments for 'micro' level change from face-washing to policing. The only clear message this sends to public and media at home and abroad is that Indigenous policies are in a failed state, or if it lay offshore, that Indigenous Australia constitutes what white Australians would call a 'failed state' (*The Age*, 8 December 2006; Jull 2006).

Although some Australian commentators and official bodies use terms like 'failed state' to describe the mis-match or social change processes of Western-style national statehood in the Pacific, they have not so labelled the fiasco of so many similar governance experiences within the Northern Territory, and outlying Australia, despite much recent media coverage and official hectoring. All these situations require analysis, understanding, accommodation, and cooperation rather than one-sided criticism by Western political and intellectual establishments. Some commentators argue that places like the NT, Torres Strait, and Pacific societies are really 'emerging' political entities, rather than 'failed' ones, dealing with huge recent problems of cultural, social, and political change which has been 'imposed from above' often with little resonance in their own traditions.

It is impossible to imagine new constitutional arrangements which do not attempt to sort out such problems. It is no less impossible to imagine sorting them out without Aboriginal Australians playing a full and equal part at the discussion and negotiation table for new structures.

## **Sounding Brass or Tinkling Symbol?**

There is something seductive for national authorities about the symbolism of adding onto, or 'completing', a nation-state by adding a new polity. The 1949 addition of Newfoundland to Canada, like the 1958 addition of Alaska to the USA,<sup>7</sup> not to mention Hawaii in the same year, was accompanied by much hue and cry, and too little realistic discussion as events were to prove later. Nunavut in 1999 was a richer vein because it showed Canadians to themselves and to others as welcoming one of the Indigenous peoples of the country, seen overseas as backward and isolated, as full partners in the geo-political culture and formal federation of a modern industrial state despite a largely non-industrial economy in the Arctic region in question.

However, there is a good deal more at stake than national public relations or political spin. In the case of the Northern Territory, the entire population of Australia is directly involved through the vote of national Representatives and Senators. The NT's future is not only a regional issue – it is a national issue as well. This does not imply that the one audience should oppress the other – *au contraire*, the national audience should ideally, support the best values in the North, while the permanent Indigenous interest in the North should mobilise national support and opinion.<sup>8</sup>

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<sup>8</sup> That has been the successful in all other northern territories abroad, by the way. Even before 1987, the Soviet authorities in some regions worked hard to support Indigenous peoples and cultures and provide high standards of public services, despite often unhelpful ideological strictures. Gorbachev himself threw himself behind opening up of Russia's Indigenous North, and President Reagan of America literally met him half-way, to the benefit of all

But every Australian citizen through their vote on NT constitutional development and/or statehood is defining our country and ourselves, no less than the NT, because the parliament of Australia, elected by all, established the terms and conditions, the context, for NT statehood and the NT constitution.

Optimism may be premature. In Alaska the 1958 statehood led to heightened Indigenous tensions resulting in the 1970 land claims laws imposed by federal Congress in Washington, and further later reforms to these to make them more just and workable. The contemporary Northwest Territories (NWT) in Canada was created in 1967, with every district represented in the legislature since 1966 and a fully elaborated province-style administration of ministries. Only in 1979 did a newly elected and predominantly indigenous NWT legislature seize the political agenda and meet in extraordinary session to undo the Indigenous rights and constitutional positions of its predecessors. It also created a 'Unity Committee' to review the NWT as a whole, finding that the indigenous peoples simply did not support its political or figurative boundaries or its politico-administrative culture. The most dramatic outcome was creation of Nunavut as a new self-governing territory, the former eastern half of the NWT (Jull 1992).

Greenland went through various stages and statuses (and Indigenous anger) after 1945 before Denmark and the Inuit Greenlanders finally hit upon a basic 'home rule' deal in 1979, since reformed and improved through various crises (over militarisation, fishing rights, and other natural resources, for the most part).

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Northern peoples and especially the Inuit directly affected across the Bering Strait.

In each of these cases the national government moved too quickly and endorsed a partially satisfactory arrangement which exacerbated the challenges and dissatisfaction of the communities.

## **The Process**

In constitutional reform the *process* is as important as the *product*. The way things are done, the way the decision-makers are chosen, the authenticity of their representative status... are all basic to the legitimacy – and acceptability – of the resulting document. People may freely negotiate a result – which could never be imposed on them – as part of the larger climate of acceptance and equality which they experience in a constitutional process large or small.

Indigenous peoples sitting with heads of government and reshaping national constitutions – as has occurred in Canada – or with federal legislators and Cabinet on land and sea rights – as in Australia in the early 1990s, USA (in respect of Alaska), and post-Soviet Russia – or with federal Cabinets or Cabinet members or national parliamentary teams on northern territory constitutions – as in Canada, Denmark (Greenland), and Northern Scandinavia (Sápmi) have been important processes of renewing relations and renewing nation-state standing in remote and usually dissident regions. It is a constitutional process in the fullest sense of the term. Peoples and their political leaderships are welcomed as equals. The nation-state is enriched and enlarged, culturally and socially no less than politically.

A process must be supple and strong. It is rare that constitutional processes occur or are completed within the lifetime of any one government. Australia's 3-year government

terms make this especially difficult. In some countries constitutional processes are required to take place over at least one national election, as in Norway's national Constitution, so that a fundamental change is properly understood and formally accepted. The passage of time has both positive and negative features – the proponents of the constitutional reforms find themselves having to brief changing and new ministers or prime ministers, while on the positive side it can mean that one unhelpful team or minister can be outlived. In many countries Indigenous affairs ministers seem to come and go quite quickly.

Women help us understand another problem of process. In some countries, and especially rural and remote Australia in recent times, the status of women in disadvantaged homes and communities – or at least their victimisation and abuse – has not kept pace with the status of men. Indeed, this seems a characteristic of many disadvantaged societies including much of Ireland and Britain in the past regardless of their language or culture. This situation may also be impacted upon by men's experience of alienation, as frustrated by their own humiliations, they turn their anger back on those they can reach, being women and children. The strong urban-based women's movements of recent decades around the world have rightly demanded a better status for women who are mistreated or discriminated against (Hirsi Ali 2007; Buruma 2006). Clearly, in Australia, where customary law is sometimes misused or misrepresented in relation to women's treatment, or where women may lack access to influence at local levels, it is essential that in any discussion of laws and rights under any new constitutions or governance arrangements women make up at least 50 percent of any oversight panels or commissions. In many places Indigenous women's and men's laws are separate

spheres, but at the higher level of protection, continuation, and elaboration of customary law and dispute resolution, women must not only be equal but must be seen to be equal. If they are not, regardless of their ethnic backgrounds or identities, *the women of the nation-state as a whole will not – and should not – accept new politico-legal arrangements in the NT.*

The related issue of traditional punishments is often an issue in Australia. Politically the easiest and most defensible way to proceed might be to note that peoples and self-governing bodies who have reached moral and political equality with the help of post-war human rights education and instruments, such as the UN Conventions, should not turn around and violate these if, say, a punishment is 'cruel and unusual' or seen by some as torture. A way around that would be to work with traditional law-makers and devise new approaches to be fully operational in 20 or 25 years, in other words, a generation. Some reasonable transitional period is not alarming; after all, the new governing arrangements themselves will not be working smoothly and fully overnight.

One of the problems in understanding processes is that for the Anglo-Australian majority, both by inheritance or assimilation as immigrants, a constitutional fix in a region of Australia is relatively minor and technical. That is probably why some of the non-Indigenous speakers at hearings feel a sense of frustration – they see the small differences between the NT and the states and wonder why they can't be simply 'remedied'. These people, after all, live in an Australia where their culture is catered for and reflected in national, state-territory, and municipal/local government arrangements. They can move to or from Tasmania or Perth or Sydney *vis-à-vis* the NT and they know what to expect.

But Indigenous peoples have cultures and languages and ways of doing things which are intensely local. They can only be Tiwi in the Tiwi Islands. Or Pitjantjatjara in the Pitjantjatjara lands of the NT, Western Australia, and South Australia. For them it is a very big leap to embrace a different system, especially for the majority who have not been accepted or comfortable or 'successful' in the white man's world. Furthermore, they are being asked, or often told by governments to join a system which has all too evidently mistreated their families and peoples in times all too recent. This is 'a very big ask', as Australians say. Australia has had visitors from Canada over the years who have talked about some of the land claims and self-government processes there, but there have been a great many more Canadian groups and specialists who did not succeed. In Canada, with more articulate and educated young people involved in the process as well as the evolution of a more informed and responsive approach (which has been influenced by historical experiences) the situation is developing. But the young smart Indigenous people are not silently assimilated. On the contrary, they know what Canada or Australia has to offer them and they want the best, just like the white families next door. They also are going to keep much of their culture, proudly, just like those of us who cherish European artistic and cultural traditions.

When one gets into the really serious work of constitutional empowerment, of the movement of peoples to equality, various metaphors of renewal and freedom are heard.<sup>9</sup> A sense of breaking bonds, of

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<sup>9</sup> Taking minutes at a large Torres Strait gathering of young and old 15 years ago I was surprised when the 1611 Bible began to be quoted from memory by one young man as part of his intervention in the discussion: 'your sons and your daughters shall

achieving freedom, is part of any *real* constitutional reform for Indigenous peoples. It is powerful and full of promise and hope. Sometimes it seems that 'reconciliation' in Australia means 'resignation' by Aboriginal and Islander peoples. Inclusion in contemporary Australia by despair, rather than with enthusiasm, is not a promising start. Some commentators and politicians seek attention by urging indigenous Australians to forget the past and just get a job in Sydney 'and get on with it' – 'it' meaning assimilation.

Here one must issue a warning to Indigenous people. Some non-Indigenous movers and shakers in this country have almost no empathy or understanding of other social or cultural experiences. They cannot see that a frightened family fleeing torture in Western Asia with nothing but their kerchiefs in leaky boats might not be as cool and calm as executives in air-conditioned board rooms, or that a restless, confined, and isolated young man locked up for five years in questionable conditions is hardly a good target for lectures on behaviour by comfortable moralists in the 'justice system'. If Australians and their governments are going to move anywhere on Indigenous policy, Indigenous peoples will have to push and shove them there. Homely examples of needs rather than grand political rhetoric

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prophesy, your old men shall dream dreams, your young men shall see visions'! (Joel 2:28). It has been said that the slaves freed by General Sherman's march through Georgia in 1864-65 felt themselves experiencing the Exodus towards the Promised Land, following the dust of the Army's horses and carts by day and its burning of the South by night. In freezing cold shacks at night by Hudson Bay in winter, I have sat in parkas with Inuit elders and heard them angrily lecture their phone-in radio audience – how could Moses and his people have reached the Promised Land with such weak faith? This in aid of the creation of Nunavut, the Inuit northern territory!

work best; anger and shouting tend to be counter-productive; persistence is needed.

## Indigenous Governance

*Indigenous governance* has become a national issue and a recognised national crisis. The Cape York commentator and Aboriginal leader, Noel Pearson, has written that it is the most important domestic policy issue in Australia (*The Australian*, 'Labor's ideas mature', 9-12-06). Indeed, so delicate is the issue between the two sides in Parliament that anyone, even Pearson, has to walk on eggs even to approach it. This is absurd. We have, by all agreement, a major national crisis, but even those who are its 'victims', the Aboriginal people living in the communities affected, dare hardly speak its name! Small wonder that the problem persists.

Furthermore, most of the solution-seeking 'action' consists of rhetorical broadsides by unaffected non-Indigenous, communicators and politicians. When serious discussion is attempted, even in the NT itself, it must be hedged around by silence with white outsiders feigning indignity or striking poses – leaving the room in a huff (for example, at the 1992 conference, proceedings by Gray *et al.* 1994).

In the national interest the main issue is an agreed approach or framework for Indigenous governance in the NT. Resolution of this issue is only possible with the full presence and equal role of Indigenous peoples and organisations at the table.

This is not a new or remarkable issue sent to plague kind-hearted Australians or their well-meaning policy-makers. It is *the* issue in all northern territories and similar regions, and it is the reason why first attempts at

statehood or similar constitutional development fail, whether Alaska 1958 statehood, or Canada's Northwest Territories' self-government from 1966, or Greenland's post-war modernisation and development plans of the 1950s and 1960s. To speak of some of the adventures in which Russia has been attempting with Western inspiration and support, to cope with regions like Yamal or Chukotka in recent years is to weep.<sup>10</sup>

Approaches to solutions vary. But one thing is clear – Australia remains in the 'phoney war' stage as long as it is angry whites hurling epithets at each other, rather than Indigenous peoples themselves sorting out the problems, albeit with official non-Indigenous governmental support. In Alaska the fervent ideologists on both sides of the white community eventually recognised that they would cooperate with whatever existing Indigenous organisations were workable and accepted by the Indigenous community, rather than trying to create new ones. In the NT context this would mean working with Northern and Central Land Councils, Tangentyere, CANCA (Combined Aboriginal Nations of Central Australia), and various *ad hoc* or more regular regional coalitions of organisations as in Central Australia. Before Australia saw the white man unpacking at Sydney Cove, the British Empire's more successful frontier generals like George Washington had learned that if one did not work with the real accepted *de facto* Indigenous leaders, one would be doomed to lose much money and even whole armies.

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<sup>10</sup> The ABC's Emma Griffiths had a fine segment on *Foreign Correspondent* on Chukotka, 7-9-2004. Unfortunately most foreign TV coverage of Inuit whaling in Alaska or oil spills across Arctic Eurasia look unseeingly at the Indigenous local societies concerned, or, in the case of Rovaniemi, Finland, the human is made all but ridiculous in the expropriation of Sami culture for a jolly Santa story for our towns and cities in mid-latitudes.

In Northern Canada, various approaches have been used in several regions. The Nunavut Constitutional Forum which developed the successful constitution now embodied in the Nunavut Act for the region – a region larger than Queensland with a total population of only about 28,000 – brought together elected Indigenous and non-Indigenous members of the Northwest Territories legislative assembly with the elected leadership of the principal Indigenous political associations, equivalent to an NT land council. In the Deh Cho region embracing the great bend of the Mackenzie River, a long and intractable standoff moved ahead when a logical and methodical working from first principles under a neutral facilitator mutually acceptable to both Deh Cho first nations ('Slavey Indians') and the national government established successive drafts of shared principles (*AILR* 2001, 109-124). The whole of Northern and Mid-Northern Canada is a patchwork of practical and pragmatic approaches to the same sort of problems of constitution-making within the national framework of the Canadian federal system and, it must be said, doing no violence to that 'national unity'. Canada's royal commission on Aboriginal peoples is perhaps the most thorough and rich study of Indigenous governance and resource management issues from an official body in modern times, including material useable in the Australian context (*RCAP* 1996). The website for the research element of the Ipperwash inquiry in Ontario will also continue to produce much cutting-edge research and analysis in coming months (*TII*, 2006-07).

In Greenland the approach which ultimately proved successful was a group of the two Greenlandic (Inuit-descended) MPs and five elected members of Greenland's national

(i.e., Greenland-wide) elected advisory council as the Greenland 'side', and seven MPs of the Danish Parliament representing the main parties from Conservative to Communist under a neutral law professor chairman. These parties negotiated the Home Rule plan which was then ratified by the Greenland-wide referendum in wild winter weather in January 1979, the new government coming into being in May 1979.

Make no mistake: the failure of Indigenous governance and underlying social peace in a region is the most basic of national interests. Such failures will see, at the least, studied unhelpfulness and lack of support for northern territory needs by national capitals, or direct and possibly heavy-handed intervention. The various interventions in Alaska as well as the federal Congressional legislation for Indigenous claims settlement in the early 1970s are examples of this approach, and then both one then the other was realised in Canada's Northwest Territories through the 1970s. Faroese home rule in the 1980s/90s period, the system which helped provide a model of Greenland, saw Danish interventions. The NT population may be centred in a few predominantly non-Indigenous towns, but the 'effective occupation' which gives Australia its legal hold on the whole region is found in the many camps and settlements of Aboriginal peoples across the whole region including the 50 percent of the NT which they own outright today.

In other words, Northern Territory authorities no less than the Federal government have everything at stake in finding a workable politico-administrative framework for Indigenous governance. If any senior government were to leave out or pay inadequate attention to the full participation of Indigenous peoples in design at every level of the new NT – that is, were

they denied a sufficient positive role – those peoples would later play another role, by negative sanction as it were, by resistance and making things unworkable, as is the age-old ‘power’ of minorities or second-class citizens from Ireland to Quebec in the past, to northern territories abroad in more recent years.

Let us hope that all sides can work together to see a positive agreed workable outcome. But as the NT’s best known historian has concluded,

*Statehood will come; industry will develop; but why the hurry, runs another line of Territorian thought... Why should the cosmopolitan charm of Darwin, the neighbourly sociability of Alice Springs, the spiritual life of Aboriginal communities, the uncrowded land, be swamped by a tide of new people and pollution? The fierce noonday sun and its soft evening light, the myriad stars of the clear night sky, the great sweep of a far country, are still there. Some day, said Banjo Paterson more than a hundred years ago, the Territory may be civilised and spoilt. Not yet, though; not yet* (Powell 2000, 242).

## **Aboriginal and Islander Coasts: A Case Study**

In an ideal world, the tropical coasts of Australia would not have been haphazardly exploited and regulated but reserved for the Indigenous inhabitants’ use, benefit, ownership, and management. Something like that is still possible, of course, provided that non-Indigenous users are fairly treated in any phasing out. But Indigenous peoples should be the primary beneficiaries of coastal waters, including through licensing

or tourism ownership, where non-Indigenous persons are involved. Some non-Indigenous operators may be well integrated with local peoples and may wish to develop joint ventures. The point is that the benefit and management of those coasts should remain primarily with the local Indigenous inhabitants to secure and develop their economic base, and draw on their ecological knowledge and customs. A fine introduction to the richness of the Indigenous-coastal economic, cultural, and social bond is Sharp (2002).

Countless reports and much official comment urge Indigenous communities to develop ‘real’ jobs and local economies. As the United Nations and others have repeatedly reported small fishing communities around the world can feed and employ themselves far better than relying on large industrialised fisheries. And yet, in Australia, so powerful is the bias of the big city and big industry that small and remote places are deemed to have no future but being swallowed up, departing family by departing family, heading for the ‘mainstream’ economy. There is little or no real public policy commitment to Indigenous communities or economies in practice, and the British-derived law is stacked against them, even when it concedes a little as in the Federal Court’s *Gumana* decision of 2007<sup>11</sup>.

The heralded Blue Mud Bay decision – *Gumana v Northern Territory*, 2007 recognised native title rights to a certain extent over the seabed area and prohibited commercial, privately licensed fishing from taking place in that area. This decision is a reminder of the unsettled and unsatisfactory state of Indigenous rights, ownership,

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<sup>11</sup> *Gumana v Northern Territory of Australia* [2007] FCAFC 23. [see [http://www.nntt.gov.au/ntdetermination/1136779170\\_3832.html](http://www.nntt.gov.au/ntdetermination/1136779170_3832.html), accessed 16 May 2007].

benefits, and interests on the Tropical coasts of Australia. Seen by many as a significant 'victory' for Aboriginal peoples, it is one concession in a general politico-legal framework never designed for the realities of Indigenous Australia. Ownership and use of land and sea country are not whimsical or exotic issues for Indigenous peoples but the core issue of their economic livelihoods and social well-being. If the courts and government continue to dispossess them in fact if not in name, then they have no future, even in their last intact home territories in the North, West, and Centre of the country. The Blue Mud Bay situation is notable because the local people are so deeply committed to the well-being of their sea territories and the protection of this resource and environment from marauders and negligent outside users.

Australian governments say they are committed to coastal environmental protection and wellbeing, but as with their commitment to Indigenous economies and well-being, there is not much evidence in terms of political focus or action, especially in comparison with the need for real change. Active policy and law are required; it is not enough to leave the Indigenous future to a Native Title Act written to protect the non-Indigenous economy and culture.

When the Darwin-based North Australia Research Unit (of the Australian National University) undertook research and developed ideas in the early 1990s along the NT coast east of Darwin and in Torres Strait for Indigenous community-centred approaches, they were strongly supported by federal and state governments. Mulrennan and Hanssen's *Marine Strategy for Torres Strait* (1994) was a fine pilot study but as they recognised, studies are not enough.

The Resource Assessment Commission Coastal Zone Inquiry (RAC 1993) was established to examine the use of 'coastal zone resources' in terms of the impact of tourism, industrial development, shipping, commercial fishing and mineral extraction. Its purpose was also to propose how the management of coastal zone resources might be organised in order to prioritise the rights of the indigenous communities concerned. However, these basic issues about public policy explored by the RAC in 1993 remain unresolved.

Australia may well lead the world in the *study* of Indigenous worlds large and small, and of every aspect of life and culture. Unfortunately it does not lead the world in purposeful action or policy. Indeed, it has retreated significantly from the recognition that without an Aboriginal political leadership involved as equals, non-Indigenous policy-makers will find it difficult to formulate answers to basic political issues through administrative or planning processes.

Indigenous peoples are not 'interest groups' or 'stake-holders' in the coastal zone. They are the original owners and occupants, the people who rely first and foremost on its natural bounty for survival. They also know a great deal more about the seasons and ways of any given locale than all but a handful of devoted lifelong scientific researchers (who are, in any case, not the sort of people to whom government policy-makers listen).

Governments have powers and resources which could be deployed for great benefit if they could accept Indigenous coastal peoples as the first and foundation level for any policy, knowledge base, and action. This is the sort of approach being taken, often belatedly, by various official and research bodies, but not yet in government *policy*.

The principle of Indigenous priority or exclusivity in resource use, e.g., fishing, herding, etc., has long been established in countries like Canada and Northern Europe. Various of Australia's fellow economically advanced parliamentary democracies have been exploring coastal, sea, fishing, and other marine harvesting issues with Indigenous peoples not only to benefit local peoples economically but also to maintain population in remote areas, to protect coastal environments, and to protect the basis of Indigenous cultures. Even American Alaska has *de facto* and *de jure* arrangements, including federal initiatives, which protect the Indigenous cultural and environmental values of large areas of the state. No country among Australia's peer group of developed nation-states in the Northern Hemisphere tries to homogenise its 'Outback' socially, culturally, environmentally, or politically.<sup>12</sup>

## **Economy and Employment**

Northern territories and other Indigenous locals often attract many programs and policies designed to prepare Aboriginal people for the 'mainstream' economy, or local possibilities. Canada had a federal program to turn Indians into Cowboys. Australia has had *Community Development Employment Projects* (CDEP).

Perhaps the contest between an Australian desire to normalise NT statehood as part of an Industrial and Pastoral economy, and the strength of Aboriginal peoples' desire to hold onto their lands and culture has blurred the issue of economic access. But the time has now arrived when one set of officials talk about bringing in new workers and populations while another set talk about

moving the Aboriginal peoples out to jobs and social cultures elsewhere. There is something very problematic with this picture, of course.

In Northern Canada, especially the Northwest Territories, there were constant demands for local employment but little recognition that new jobs were going to outsiders, even the jobs to recruit locals. The Indigenous peoples faced unemployment because outsiders were brought in to take the jobs. The presence of a transient non-indigenous population has had implications for local economic opportunities.

Nicolas Rothwell (2007: 15), writing from his home city, Darwin, observed:

*[T]he issue is the state itself, its structure and its ruling ethos. The territory is too small and stratified to operate a conventional democratic government; it functions more as a patronage system.*

*The economy over which the 16,000 public servants preside is wholly artificial. Four-fifths of government funding comes straight from Canberra; bureaucrats spend and distribute this money to contractors and vassals of various kinds. The rest of the population churns at an intense rate: perhaps one-fifth of mainstream Territorians leave for good each year, to be replaced by more pass-through citizens. The indigenous population remains and grows.*

Mobility of labour and capital were among the reasons for Australian Federation in 1901. Will these best serve Indigenous workers, or should there be a local

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<sup>12</sup> For a short and powerful discussion of this philosophy, see the few paragraphs in the report which launched contemporary environmental policy and politics (Brundtland 1987).

preference for a transition period of 20-25 years? Alaska, Greenland, and the Canadian northern territories – and other Indigenous regions – have found that without a serious program to provide different types of skills to Indigenous people, they will remain marginalised. Another approach could be to empower local/regional Indigenous authorities and have the central NT government focus on resourcing these.

The problem is that while some in governments complain that Indigenous people are not taking up Western work and work habits, government policies are partly or largely to blame. Furthermore, Indigenous people have many good reasons for not wishing to venture into the White Man's society and economy, for example to avoid discrimination, alienation from family, loss of language, and culture.

### **The Legacy of Exclusion – No Small Problem**

Only very recently have the insistent and persistent grim realities of life among Aboriginal communities and fringe suburbs forced the NT into national attention.<sup>13</sup> This NT is not the place for dreams of enterprise riches or New Singapores, but is a real, living, breathing place and dreams are often substance-induced. This is the NT which faces the federal government as it considers the future.

As Brown writes (2002: 181) of the general Indigenous situation in Australia:

*Their exclusion has constituted a very particular and compelling place, for it was precisely the 'failure' (however conceived) of Aboriginal*

*people that legitimised white possession of the country. It is not surprising, then, that Indigenous people have been constituted as a 'problem' ...At the same time, they are a threat and an otherness whose lawlessness and disruption is to be feared. How to handle this 'people as problem' has led over the past century to successive forms of institutionalisation ...*

*'Invisibility' and institutionalisation have constituted the conditions within which Aborigines could pursue their well-being within the context of the dominant Australian society.*

The well-being of Aboriginal peoples has been mismanaged in part due to the ambivalent and fluctuating national policy towards northern territories. High levels of national subsidies for Aboriginal welfare contrasts with the enduring low socio-economic conditions. Disturbingly, the failure of delivery systems is associated with lacklustre Indigenous efforts to assimilate, as Brown (2002: 174) notes:

*The implicit price of access to 'ordinary' levels of welfare – education, housing, health, infrastructure – has been assimilation. ... Self-determination, reconciliation and multiculturalism can and have proved to be very difficult to grasp, particularly if the goal is one of administering an already complex service network. But part of the anger and confusion concerning the failure of welfare delivery seems to be directed at the 'failure' of Indigenous people to be 'just like everyone else'.*

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<sup>13</sup> The latest written piece to cause disturbed reflections is a book by Louis Nowra, see Nowra 2007 for press excerpt

However, the nature of the challenges that Indigenous peoples contend with reveals that they are not 'just like everyone else'. Their problems are not individual, rather they are systemic and structural, embedded in institutions that were created on the basis of their exclusion and dispossession (Brown 2002:174). Modern institutions and their establishment have proven unwieldy mediums in which to generate dialogue and more participatory approaches. Mick Dodson (1995:43) notes that:

*'As a small minority with little economic, industrial or political power, Indigenous peoples and our interests are already easy to overlook but our marginalisation is not just a problem of numbers – it lies at the heart of the way Australia developed and functions as a modern nation'.*

Overcoming these systemic and structural problems is a substantial task. If it is any comfort, other countries and their well-intentioned officials have faced similar problems in recent decades.

### **The 'National' in National Identity**

A pointed but fortunately non-violent conflict occurred in October 2006, drawing together many strands of NT constitutional politics. The federal minister for indigenous affairs had flown into Mutitjulu, an Aboriginal community at Uluru in the heart of Australia (and hearth of NT tourism), where he and his aides had been making some controversial or at least misunderstood interventions in the name of combating local violence and sexual abuse. An angry elderly lady poked him several times with a stick while abusing him verbally, this while he was trying to talk to the crowd. This lady was representative of community opinion, it

would appear.<sup>14</sup> But the whole episode was unnecessary, to say the least. Why had the federal minister and government become involved in this local community issue at the same time as this and other ministers were rushing about the country denying that they were responsible for conditions or problems in the NT? In Australia, unlike the other British Empire settler countries (USA, NZ, Canada), the national government does not usually exercise paramountcy in indigenous affairs, even though a 1967 constitutional referendum gave it such power. Indeed, the NT Chief Minister (*de facto* premier) has been a particular target, not least of the indigenous affairs minister who has not always come off with more dignity in his encounters with her than with the lady with the stick at Uluru. Both sides – federal and territorial – have been exchanging barbs and denials and proposals and multi-year plans, but even an interested or informed onlooker is apt to be bewildered. Perhaps the first order of business for 'the implications for federal arrangements' should be a *rapprochement* between the existing governments on the one hand, and their advocates and agencies on the other.

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<sup>14</sup> This was a 'goodwill visit'. 'Dozens of protesters – including many Aboriginal women – shouted abuse' at the minister, and one older man 'told him: "If I was younger, I would put you on your arse."' A 'Traditional owner shouted ... through a megaphone: "You've sneaked in here like a dingo."' Others called him 'minister for racism' and an 'elderly woman prodded [the minister] three times with a stick and demanded he apologise', etc. The NT capital city newspaper ran the front page headline, 'Brought heckled, poked with stick'. The minister, 'who was protected by several police officers carrying riot spray, was visibly shaken by the rowdy reception.' The Brisbane newspaper had a photo of him living up to its caption, 'Visibly Shaken'. – *Sunday Territorian*, Darwin, 29-10-06; *Sunday Mail*, Brisbane, 29-10-06; and Minister's press release, 'Law and order boost...', 28-10-06, <http://www.atsia.gov.au/media/media06/7306.aspx>

A further reason for toning down the sound and fury and seeking some constitutional peace is the generally fraught state of Indigenous relations with Federal and State authorities. As 2006 wound to its close the ethno-cultural tensions in Australia were increasingly coupled with the anxieties of even urban and urbane middle-classes over *Australianness, identity, and values* – and the values and identity of those who may not seem to be ‘One Of Us’. However, most dangerous for the long-term may be Aboriginal-White relations in the North, Centre, and West of the country. Unlike one-off acts of political violence like a terrorist bomb, the political relations among the founding peoples of Australia go to the heart of national identity and political selfhood. Observing the fiasco surrounding the recent death in custody on Palm Island, the subsequent riot and burning of official strongholds, and the ensuing public disputes and further coroner’s report; a number of commentators have sensed a new anger and willingness to take action, and have noted that tensions have reached a very dangerous threshold.<sup>15</sup> The Aurukun excitement over a fortunately minor assault shows the times at hair-trigger readiness (*Courier-Mail*, Brisbane, 11-1-07).

A further problem of the moment brought on by official and media focus on Aboriginal community problems in the NT and other hinterland areas, and with a seasoning of the commentariat’s ‘history’ or ‘culture’ was added, is the very existence of Aboriginal cultures (for example, C. Pearson, ‘Facing cultural reality’, *The Australian*, 24-3-2007). The focus on social and cultural dysfunction and violence towards women and children, becomes an argument for some to claim that

Aboriginal cultures are effectively defunct, outdated, irrelevant, a problem to be overcome, or even things to be disregarded and extinguished. In the later 19<sup>th</sup> century it must have seemed to many that Ireland, Iceland, Norway, and Sweden were dead – lost in rural desolation and violence and trans-Atlantic flight to new lands. Copenhagen, a fine and peaceful great city in modern times, was a hell-hole of industrialisation, urbanisation ills and alcohol. One cannot imagine the lack of those rich and vibrant small countries in today’s world, or the disproportionate roles they play in international relations and global culture. Anyone who would have given up on them a century or more ago may have had some reasons to lose hope, but would have been entirely wrong. Most of us are wiser about new Asian power-house cities today – they may seem to have little in common with historical tradition, but they are nevertheless Chinese or Japanese or Indian or Javanese. Australia’s Aboriginal cultures have already outlived most or all others on earth – it would be unwise to dismiss them because *we* have failed to learn how to relate to them, or how to help them recover from their collision with our European industrial revolution. There is no reason to doubt that *they* will find their way forward, nevertheless.

### **Rich Cultural and Social Legacies**

Drawing on observations on the exchange and inherently transformative agenda of culture and social relations in Northern Scandinavia, Lind (2004:57) writes:

*In prehistoric times, we find egalitarian relationships between various population groups in the northern regions, both Saami and Nordic. In the Middle Ages, new and different relations came into*

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<sup>15</sup> *The Australian*, *Weekend Australian*, Brisbane *Courier-Mail*, and *Brisbane Sunday Mail*, as well as *ABC News Online*, have provided thorough coverage since late 2004.

*existence between the emerging nation state (the Norse) and what we today call the indigenous population (the Saami). The nation state and the Christian European cultural tradition ended up in a superior position of power. The equality between the two peoples disappeared. We cannot ignore the processes which took place when the Roman Catholic Church and the European cultural tradition took over the socio-political and religious arena in the far North and the influence this had on relations between populations here.*

That is, both population groups were changing and being influenced, and then suddenly one of them became legitimised by a constitutional change which left the other eternally inferior and disadvantaged. The 19<sup>th</sup> Century change in power and official status within the Red River community in Canada's Prairie is a similar instance of heart breaking destruction of a rich and multi-faceted society, with community members and their descendants left disadvantaged and marginalised to this day (Van Kirk 1981; Carter 1999).

This attack on established indigenous cultural traditions has also been enacted at different points in Australian history. Indeed, Australian Federation in 1901 was in part motivated by fear and led to subsequent diminution of non-European population in these places, through the introduction of the White Australia Policy. As various authors point out, for example, Reynolds in *North of Capricorn* (2003), the modern-era towns of Northern Australia often began with significant amounts of non-white (Aboriginal, Pacific Islander, Asian) labour, industry, and initiative. However, the cosmopolitan or polyglot settlements of

Northern Australia, like those of Asia for centuries, and of the Mediterranean in Classical times, have been cradles of our culture, economies, inventions, art, and much else. In the bitter and divided worlds of today's geo-political era, more than ever should we value those places which remain and, if we can learn how to do so, to nurture their richness.

Following the initial stages of permanent outsider settlement in an already inhabited region remarkable mixed racial, cultural, religious, linguistic, and employment communities may develop. Whether they persist, is another matter. Broome and Thursday Island, like Darwin only 'yesterday', are appealing and exciting precisely because of their multi-ethnic nature and heritage of all kinds. Few people from South-Eastern Australia return from a visit to Darwin unappreciative of the rich variety of social and cultural life they find there.

In northern territories everywhere the first inhabitants have shaped, directly or indirectly the character of the region. The unique and diverse characters of Broome, Thursday Island, Darwin, and other such places have far more to fear from homogenisation than distinctiveness.

If we can learn how to live together with our different faiths, histories, and languages, then so much the better for us and the world. This is one of the occasional benefits of northern territories around the world. The time when the Victorian industrial age made all alike has peaked. Now the regional political cultures and identities mentioned above may shape new sorts of worlds on our frontiers where we used to imagine no more than making them images of our southern cities.

## **Emerging Political Culture, or, Frontier Becomes Mainstream**

Statehood for the Northern Territory *could* convey significant benefits to all Australians as long as a little imagination and insight accompany such a transformation. To some supporters of statehood that means *equality* in the sense of *uniformity* with the existing six states. Since 1945, governments and well-meaning folk from 'Down South' have seen northern territories as *lacking* and in need of everything from school curricula and housing through religion and police officers to medicine and more pasta in one's diet.

But a funny thing happened when the remote regions 'went political'. Although patronised (in both the pejorative as well as the neutral sense) by Southern Indigenous groups or peoples, the Northerners – Yolngu, Torres Strait Islanders, Sami, Inuit, Dene – very quickly showed that they had their own style and their own approach. What is more, they very quickly began to make progress with old political agendas no less than 'new' legal and political issues such as claims to sea and land, self-government, and resource management.

Because *northern territories* have not yet made all the final decisions or mistakes or structures which we have grown up with in the South, they are more open to novelty and practicality informed by modern thinking and new initiatives, to good sense and experiment.

What is more, the advances in Indigenous and Non-Indigenous governance systems fuelled by the Indigenous challenge, or confrontation, or litigation, or all of those things; has generated new ways of dealing with the continent's oldest problems of the White man's frontier *vs.* the Indigenous person's homeland. Environmental and resource management issues and

accommodation of cultural diversity are matters of which all nation-states need to become more informed and skilled in handling. If we can see through the smoke and hear through the noise, this is what Indigenous peoples are teaching us, or trying to teach us, in hinterland and remote areas.

## **International Exemplar**

Australia is the only wealthy developed country in the world's tropics. Its political and constitutional cultures continue to owe more to the North Atlantic world than to the Southern Hemisphere. Its British and European traditions, economic links, and living standards are an important part of the country's political and economic appeal in the Asia-Pacific, as are research and academic achievements. There is every reason why Australian Aboriginal political status and socio-economic conditions should be an example to the world. For a while Australia enjoyed such standing for its modern-day efforts at home and multilaterally in relation to Indigenous rights and policy development. The past decade, however, has seen that standing undermined, with a fundamental change in direction in government policy away from self-determination, retreating back to "service delivery" by mainstream agencies and the valorising of assimilationist ideas such as alienation of Aboriginal-owned land for private home ownership in remote Aboriginal communities.<sup>16</sup>

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<sup>16</sup> More grimly, a high-powered day-long workshop on The State and Violence at the University of Queensland on 22-3-2007 heard one respected expert voice call for Aboriginal and Islander community leaders and elders to visit Australia's Pacific neighbours to discuss or warn of the characteristics of Australian colonialism as experienced at home before it is experienced afresh today in Australian policies and actions in Melanesia.

The United Nations in various rights, health, development, cultural and other fields, intended that its affluent and progressive members including Australia, Norway, Canada, New Zealand and Denmark, would sign up to progressive commitments and open themselves to scrutiny as a way of encouraging a general lifting of standards among less fortunate or less democratic countries. As a result, countries like the three Scandinavian peninsula countries have had plenty of grief recently from their support for ILO 169, and Canada earlier for the discrimination against women in the Indian Act. Norway and other countries welcome scrutiny as an opportunity to help other countries progress.<sup>17</sup>

On a practical level we have much to learn by visiting and learning from the builders abroad – both Indigenous and non-Indigenous – of reformed societies and experiments in social improvement and Indigenous governance. At home we have our own prejudices, but when we go abroad we meet an array of people. There we can be more open to all voices, less prejudiced, and can learn much.<sup>18</sup>

Some of us suspect that the ideal Indigenous governance and northern territory may already exist. Unfortunately it is not found in any one place, but rather in bits and pieces here and there. These could be assembled – on the page or in the mind – from

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<sup>17</sup> One recalls one po-faced Norwegian response to the Council of Europe, an 'apology' to a large inquiry on social conditions for no longer having a national circus. Of course, the UN can be confused, too. The much noted Alonso-Martinez report (1998) on treaties and constructive agreements has sections on Greenland and Northern Canada which are not only factually wrong, but with whose interpretation we must also argue as seriously demeaning the practice in those two regions in recent decades.

<sup>18</sup> In recent years Australians like Paul Kauffman from Canberra have organised such study tours for indigenous groups in the northern hemisphere.

experiences in many places, each with its own excellences (including the NT and Torres Strait and elsewhere in Australia) to make something better.

## **Conclusions and Recommendations**

### **The Challenge – Towards a Constitution**

The main federal implication of statehood for Australia's Northern Territory is the need for a constitutional process and an outcome in the NT which fully involves and includes Indigenous peoples as founding fathers and mothers of the new entity, securing to them their long-time home. Currently, many Indigenous and Non-Indigenous people as well as the major political parties are unhappy with the current NT political status and this provides a strong incentive for cooperation and accommodation to find a new approach.

Across the divide, many Non-Indigenous people assume that the constitutional future should be and will be a simple application of (their own) majority vote, i.e., 'business as usual'. Many would also assume that a new state will be essentially the same as the 1890s model enshrined in Federation, 1901. Sometimes in NT constitutional discussion these views are oversimplified as 'democracy'. This is one side of the NT constitutional divide. On the other side are the Indigenous community, its friends and allies, and others who seek recognition and respect for the NT Aboriginal population and its ethno-cultural regions, character, history, culture, and aspirations in new political and administrative arrangements, including guarantees for land and other rights in federal and/or NT constitutional documents.

During the inquiry sessions in mid-November 2006, the Parliamentary

Committee Chair, Peter Slipper, and other voices reminded their sessions that consensus – and a downplaying of partisan and other divisions – was needed to make serious progress towards a Statehood constitution. It was clear both implicitly and explicitly in the hearings that no such consensus existed at present. Building consensus is integral to the challenge of generating momentum towards a Constitution.

### **National Oversight**

The British Empire, when its British-settler colonies were decolonised, left responsibility for Indigenous peoples and their lands with national governments to provide some protection for them vis-à-vis settler land and development interests which would sweep them aside. This was done in USA, Canada, and New Zealand; however, convincing and enduring attempts were not successful in Australia. This is why Indigenous peoples in NT, the rest of Australia, and other countries have preferred national government oversight and constitutional protections for land, sea, and other rights to sub-national (state or territory) ones.

Political and constitutional changes in *northern territories* in Australia and other British-derived and Northern European liberal democracies since 1945 have shown remarkably common and predictable phases and conflicts. Where major constitutional or administrative development has preceded a political settlement with Indigenous peoples, as in Alaska, Norway, Northwest Territories (Canada), Greenland (Denmark), conflict within the territory becomes an issue where federal or national governments and legislatures are forced to repeatedly intervene until a real, workable, and Indigenous political settlement is reached.

### **The NT in Context**

The NT constitutional provisions for regional and local government may well be the most difficult issue. Indigenous peoples need security for cultural and social processes in their self-governance. If this is impossible to agree on in reasonable time: a framework or enabling clause – or a constitutionalised political accord – to provide for an acceptable outcome after further work and negotiation may be useful.

Constitutional and political reform will not immediately improve NT socio-economic conditions, but they do constitute crucial pathways to achieving those. If such a minimum is denied to Aboriginal peoples, they will opt out of any new statehood, in effect, or participate only partially and grudgingly while they seek other roads to self-government. They will passively reject the new arrangements and polity created, while using their power and numbers as a negative sanction on statehood and post-statehood NT development.

At the same time, it is important to consider that achieving equality of socio-economic outcomes or other such markers is not necessary *before* mutual acceptance has been reached politically for statehood to proceed; rather, the threshold needed is a sufficient commitment and process in place to assure Aboriginal societies that the new NT entity can be their genuine political home and has a politico-legal framework which guarantees them sufficient autonomy and decision-making power.

For example, concerning the management of ecological systems, the coastal and marine environment is especially important in light of recent court cases and its capacity for enhancing the Aboriginal economy. A comprehensive marine strategy and framework linking senior governments with

local Aboriginal knowledge, users, and managers should be envisioned in new constitutional arrangements. In a new constitution the NT may wish to have similar environmental rights included, as a possible meeting place of both Indigenous and non-Indigenous concern for protection of landscapes, sacred sites, seas and productive species habitats.

### **Conclusion – The Opportunity**

The peoples of the Northern Territory, together, have an opportunity to make a braver and fresher start. While non-Indigenous NT residents, from all corners of the world, pride themselves on doing things differently, even in novel ways, the Aboriginal peoples would be making a totally new sort of statement through a constitution. Having been ignored or taken for granted or simply rolled over by the settlers' system, now they could have an opportunity to say 'Yes!' to Australia and to sharing their region with the others who have come there by choice. Such a commitment between two groups who too often take each other's presence reluctantly for granted – even in grudging silence, or angry epithets – would be a concord, indeed. Such a statement of new acceptance and commitment to a new future together – or 'reconciliation' for those for whom the term has not lost its meaning – would give a new Northern Territory the launch which such a

step deserves, not merely a technical legal tweak.

Some sort of simple short political accord could express the intent and then become a part – perhaps the preamble – of the new NT constitution. It would be truly made in Australia, made in the NT, and most importantly, made in full knowledge and openness in Aboriginal Australia.

As a wealthy developed country unique in the Tropics – and one among so few others in the whole world – Australia has the capacity in places like the NT, the Torres Strait, the Kimberley and Cape York, to set an example for good and just outcomes for remote and distinct peoples. Not only is the present and future of the Northern Territory a national forum or stage for healing processes, it is a rare opportunity to 'get it right' in the renewal and reconciliation of black-white relations for which almost all politicians of all parties have so vehemently expressed hope in the past two decades.

A good process and outcome in the Northern Territory will enhance and expand the sense of Australian identity and pride at a time when many feel we are shrinking in fear and anxiety. With all our rhetoric at home and abroad about superior democratic visions and values, we need to be less defensive and more confident in opening up to new ethno-cultural relationships in our own national hinterland.

***Some useful reading... on indigenous governance and self-government processes.***

In addition to references elsewhere in this paper, I recommend analytical and comparative discussions of northern territories, including Australia, in Nettheim *et al.* 2002; Wessendorf 2005; Hocking 2005; Loukacheva 2005; Russell 2003; Stephenson 2002-03; RCAP 1996; NARU-NLC-ICC 1992; Gray & Roberts 1994; Jentoft *et al.* 2003; IWGIA 2001; Tully 1995; Strakosch 2006; etc. Australian and Canadian cases are compared often, e.g., by Peter Jull, and some good new material in addition to items in the preceding sentence include Russell 2006; 2005; and 2003. The *Hansards* for the Standing Committee on Legal and Constitutional Affairs, House of Representatives, Parliament of Australia, Canberra, for the inquiry into Northern Territory statehood and its Federal implications, 14-16 November 2006 – are well worth reading. Shannan Murphy's 2005 article on NT constitutional processes 1985-1998 is indispensable and the whole draft from which it is drawn worth obtaining from the publisher. The short article by Nietschmann (1994) is hard to better on the world of indigenous autonomy and autonomies. For North Australia there are many thought-provoking items, not only about the Northern Territory itself, including Shukul 2001; RCIADC 1991; Neate 2006; Groves 2001; De Ishtar 2005; H Kajlich 2000; A Kajlich and Dhimurru 2006; Rose 2002; Hunt and Smith 2006; etc. The Indigenous Governance project of ANU's CAEPR (Centre for Aboriginal Economic Policy Research) is a rich source for the failure of current governmental efforts, including the COAG 'whole of government' trials, e.g., Gray 2006 on the NT.

Anne Brown (2006); and Volker Boege (2006) remind us how much the Pacific shares specific problems and issues with the NT and much of outlying Australia, while Hurriyet Babacan (2006), Kevin Clements (2006) and others in the remarkable day of shared discussions and expertise on *re-thinking multiculturalism* locate us in the larger context and cultural relations debates now troubling Australia (Gopalkrishnan & Toh 2006; Multi-Faith Centre 2006). Taiaiake Alfred's 1999 manifesto from within the Indigenous world of welfare and politics is a sharp reminder that all have much to do, and a new book review of his newer and similar work worth pondering (Taylor 2006). Woodruff (2005) on Democracy should make us all squirm but is also a fascinating insight into history we all know. Its final chapter leaps forward to deal with today's USA. A news report from the NT, one which filled some of us with wonder and renewed commitment at the time to find constitutional progress was Toohey (2001) on a Central Australian fiasco within sight and sound of 5-star international resort life.

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## **About the Author**

PETER JULL is an Adjunct Associate Professor, Australian Centre for Peace and Conflict Studies (ACPACS), University of Queensland. He has written this paper for political practitioners and policy-makers, both Indigenous and non-Indigenous, in the hope that they may find it useful as they seek to discuss and find ways forward in constitutional and political reform.

The author has been interested and involved in the creation, governance, and study of northern territories since 1960. He worked on the first full Northwest Territories (NWT) elections and the creation and development of the NWT government and administration in the 1960s. Later he was the chief of staff for the team creating Nunavut, Canada's Inuit territory, and later still contributed to work to create Nunavik, the Inuit territory of Arctic Quebec. He also visited, learned from, and wrote about the northern territories of Greenland, Sápmi ('Lapland' or Northern Scandinavia), and Alaska, and later, the Northern Territory in Australia where he lived and worked, and the Torres Strait Islands. Visits to Iceland the Faroe Islands confirmed his suspicions that their history vis-à-vis powerful nation-state governments had been similar to those of other 'Indigenous' cultures. He met the first Siberian delegations who joined the Inuit Circumpolar Conference, the international Inuit organisation, in the Perestroika days of Gorbachev's Russia, and read all he could of the explosion of information on the Indigenous peoples and politics of European Russia and Siberia published after that time.

He has worked for Indigenous peoples' organisations, as well as published studies

for governments, on these matters for several decades. Through the 1960s and 1970s he worked with Canadian governments and the Inuit and their national Indigenous coalition partners on the successful reform of the Constitution recognising Indigenous peoples as political communities and their rights.