

**AUSTRALIAN INSTITUTE OF ABORIGINAL  
AND TORRES STRAIT ISLANDER STUDIES  
R E P O R T   S E R I E S**

**ABORIGINAL  
SELF-DETERMINATION  
IN AUSTRALIA**



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(EDITOR)



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*Darryl Pearce* was appointed director of the Northern Land Council in mid 1993. An Arrernte/Wampaya person, he has worked most recently with the Central Land Council in Alice Springs in the Northern Territory, as a policy project officer. He has also worked with the Victorian Aboriginal Education Association in Melbourne as a policy officer; with the Aboriginal and Torres Strait Islander Commission (ATSIC) in Canberra as a project officer; and with the Pintubi people at Kiwirrkurra in Western Australia as a community adviser.

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*Pat Turner* was completing her masters degree at the University of Canberra in 1993 at the time of this conference. She was previously assistant secretary of the Department of the Prime Minister and Cabinet, an appointment she held during the establishment of the Council for Aboriginal Reconciliation. An Arrernte woman from Central Australia, Ms Turner has held a number of senior executive posts, including that of deputy chief executive officer of the Aboriginal and Torres Strait Islander Commission (ATSIC). In 1990 she was awarded the Order of Australia for Public Service.

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*Peter Yu* is executive director of the Kimberley Land Council. He was Assistant Royal Commissioner investigating Aboriginal deaths in custody and has been chairperson and executive member of several organisations in the Kimberley region of Western Australia. He has also represented Aboriginal people at the United Nations and other international forums.



## *INTRODUCTION\**

*Christine Fletcher*

This volume represents the proceedings of a two-day conference in Townsville, Queensland, August 1993, to celebrate the International Year for the World's Indigenous People. The conference took place because Aboriginal and Torres Strait Islander people from around Australia supported it. They helped to put the program together; they presented almost all of the papers and established the political agenda. At the time that the conference was scheduled, the Prime Minister was meeting with cabinet to decide the shape of national native title legislation. Because of that, many of the Aboriginal speakers were desperately rushing around the country defending Aboriginal rights and calling for justice. Somehow, they found the time to contribute to the issues in this volume: Aboriginal self-determination and federalism. During the lead-up to the cabinet debates, Aboriginal leaders were consolidating the position of their respective communities through various policy statements and through a concerted public awareness campaign.

Strategic policy statements emerged from two Northern Territory conferences held earlier in August: the Eva Valley conference and the National Aboriginal Constitutional Convention in Tennant Creek. Following the Townsville conference, there was a three-day meeting in Canberra in late September in response to the Commonwealth's Mabo legislation discussion paper. That meeting attracted several hundred Aboriginal people from all parts of Australia. Statements from these conventions not only contain a new direction for Australia's indigenous population but also a powerful set of principles for Australian governments.

The Commonwealth's native title legislation was finally passed by the parliament just days before Christmas 1993 and the political circumstances around the emergence of native title signalled the carriage of a number of important issues into the Aboriginal reconciliation process itself. Self-determination is a key element of this process: it is concerned with the fundamental right of people to shape their own lives. This point is made time and time again by all of the contributors to this book.

The book is organised into seven parts around a number of different sub-themes, using self-determination as the framework: reconciliation, administration, constitutionalism, international law, Aboriginal law, self-government, sovereignty, self-management, regional government, community autonomy, local government, and economic development — all are discussed.

The keynote address by Lois O'Donoghue, chairperson of the Aboriginal and Torres Strait Islander Commission (ATSIC), places self-determination into context with the United Nations International Year for the World's Indigenous People and explores, in

detail, the existing institutional structures which support the principles of self-determination in Australia and internationally. In her view, governments must continue to address the question of 'rights' and they must not lose sight of the principles of self-determination: these are fundamental to the future of indigenous people. The development of governmental structures and access to resources are prerequisites for the advancement of Aboriginal peoples in Australia and, in her chapter, she argues strongly in support of those views.

Senator Margaret Reynolds takes up the theme of self-determination by providing a critical analysis of the way the native title issue has been handled in Australia. All governments had a problem placing the issue of native title into context with their own political agenda. As Senator Reynolds argues, there are a variety of reasons for this: they range from misinformation surrounding the issue of native title, lack of understanding about Aboriginal society, policy confusion, greed and problems associated with reconciling the property values imported along with the initial British/European legislative paraphernalia, with the Aboriginal view of land as the universal source of law

The international community sought to apply the principle of self-determination to people who had been trapped, disempowered and dominated by the circumstances of foreign political orders. In the case of Australia, the foreign political order emerged with white settlement in 1788. With the High Court's Mabo decision as the centrepiece, state government debates on native title have been thinly disguised arguments aimed at protecting certain principles from change within the system of European property laws. From the direction of the Australian Aboriginal community, however, the native title debates have been much broader and, by some criteria, more advanced and more sophisticated than the uninnovative strategic policy lines pursued by many politicians, bureaucrats, governments and the resource industry (eg see the Mabo legislation debates. Commonwealth, Western Australia, Victoria, New South Wales)

Henry Reynolds expresses his views, as a historian, through a series of four short stories: *A Proprietary Right to the Soil*, *The Improvement of the Colony*, *To Clear His Territory of the Natives*, and *Validation and Dispossession*. He argues that the time has never been better to turn the tide in favour of positively recognising the Aboriginal inheritance of their land. May O'Brien expresses a similar sentiment. She tells a passionate story about Aboriginal rights, dispossession and the relationship between black and white Australia. Both of these contributions provide a rich historical framework for the collection of essays to follow

Part 2 is comprised of four relatively short essays on contemporary problems. Darryl Pearce outlines some of the disasters which have emerged because of a breakdown in the relationship between Aboriginal communities and governments in the Northern

Territory. He puts forward a strong argument in favour of self-determination and self-government for remote Aboriginal communities and his view, on behalf of the Northern Land Council, supports major institutional changes in the distribution of authority in the territory. Darryl quotes prolifically from a Committee for Economic Development of Australia paper by Russell Mathews (Reconciliation of All Australians: Towards Aboriginal Self-Government). As a member of the Commonwealth Grants Commission, Professor Mathews worked extensively on fiscal equalisation in Australia and, more recently, in Canada. With his permission, we have included the original text of that paper as an Appendix.

Charles Perkins also argues for change, but he dismisses the burdensome bureaucratic solutions of more welfare in favour of an entrepreneurial approach to self-determination. His chapter emphasises the naivety of the Australian welfare mentality, and he argues that governments have eroded Aboriginal rights by undervaluing the Aboriginal-style approach to self-determination and economic development. He makes the point that governments have imposed bureaucratic restrictions on the economic creativity of the Aboriginal community and he suggests a vigorous reform agenda across all major policy areas (eg education, Aboriginal culture, health) and the organisational reform of major administrative structures.

Pat Turner picks up these points in her chapter on administration: she reminds us of the difficulties involved in establishing and maintaining an administrative structure with the capacity to respond directly to the needs of Aboriginal and Torres Strait Islander people. She points to the weaknesses in the system but she also acknowledges the strengths: her chapter is enthusiastic about the future and she is optimistic about the role of the Aboriginal and Torres Strait Islander Commission in that future. Nationally, the Aboriginal community has been refining its political agenda around the development of a united strategy and Pat's paper is very much in this genre.

The last paper in this section is by Pastor Bill Hollingsworth. His approach is to outline the fundamental principles of self-determination and then to put contemporary Aboriginal society into the reconciliation framework. He carefully addresses the difference between self-determination as an international principle and its use in the domestic context: it was, as we know, a set of principles initially espoused by the United Nations to enable dispossessed groups and communities within nation-states and mandated territories to assert their economic and political rights and, on some occasions, their sovereign rights. Its use as a domestic policy is an integral part of the process put in place by the Council for Aboriginal Reconciliation.

Part 3 of the contents is devoted to the Australian constitution — both directly and indirectly. The first two papers — by Cheryl Saunders and Garth Nettheim — focus

on interpretations of the legal provisions for Aboriginal sovereignty Cheryl is an expert in common law, and she draws out the need to define the constitutional goals of the Aboriginal and Torres Strait Islander people in the constitutional reform process. She suggests also that perhaps we should reflect, for the future, on a popularly elected constitutional convention, preferably one which guarantees provisions for representation by popularly elected Aboriginal and Torres Strait Islander peoples

Garth Nettheim addresses the claim for native rights and sovereignty under international law and, like many others, he points with despair at the problem of making domestic governments take seriously the need to extend their concept of Aboriginal self-determination. Garth's argument is that indigenous people must have the political control and the economic freedom to pursue their own development and, in his assessment of both the positive and the negative outcome of judicial decisions in Canada and Australia, it is long past the time for governments to recognise that any regime which operates to the detriment of its people is less than adequate: he argues for urgent constitutional reform.

Frank Brennan has written prolifically on justice for Aboriginal people His paper concentrates on Aboriginal people and the courts. He offers a critical analysis of the significance of the recognition of Aboriginal Law by the High Court. Disaster strikes when people are deprived of their culture and, as Frank argues, notwithstanding the fundamental moral problems associated with the underdevelopment or the destruction of someone's culture, governments have an urgent obligation to come to terms with the need for institutional reform across the board.

Brian Galligan has been involved in an Australia-wide human rights survey for the past two years, and he drew some of the data together for the conference in an effort to highlight some of the attitudinal problems that are likely to confront Aboriginal reform processes. His findings are somewhat unsettling. To some extent, they are backed up by Rob Riley's exposure of damaging media campaigns, launched by various Liberal party leaders in Western Australia and designed specifically to turn public opinion against any advancement of Aboriginal control over economic and political development. Brian's chapter is followed by a report from Heather Brown and Darryl Pearce on a Statement to the Prime Minister from the Aboriginal Constitutional Convention in Tennant Creek, August 1993. The actual texts of both the Eva Valley and the Tennant Creek statements are included in their commentary

In part 4, the papers by Peter Yu, Getano Lui and Marcia Langton focus on the relationship between government and Aboriginal jurisdictions in the Kimberley, Torres Strait and Cape York. Aboriginal autonomy in all three regions is constrained either by state government inertia or else state hostility. Aboriginal people are all too familiar with some of the problems which arise when there are so many governments with the power to

make laws. Federalism can be one of the most difficult and, at times, confusing systems of government. It is designed to place limits on the authority of central governments, by making it difficult for them to implement policies without consulting other governments. In principle, the idea of so many governments is that one level acts as a constraint on another level of government. In this context, for the people of Torres Strait, the process of reform is progressing somewhat more clearly than for people in the Kimberley and Cape York: in both of these areas of the north, state and local governments have compounded the problem of self-determination. Aboriginal people want access to resources — government resources. And, since government itself is a resource, the Aboriginal community wants the right to be able to apply the principles of self-determination to the circumstances surrounding native title. In other words, they want access to the right to select their own resources. One of the chief objectives to emerge from the Aboriginal push for reform is self-government.

Local government authority dominates the chapters in part 5. Damien McLean and Sylvia Benson De Rose provide complementary perspectives on Aboriginal empowerment at a local level. Aside from the Commonwealth, the most familiar players in terms of delivering services to Aboriginal communities are local governments. For non-Aboriginal communities we would include a reference to state (or territory) governments but, as the Ngaanyatjarra people in Western Australia are only too aware, state governments have not been known for their responsiveness to Aboriginal communities. As a consequence, Aboriginal communities — particularly those in remote areas — have targeted local governments in an effort to increase their democratic participation. Until recently, some communities were virtually ignored by local authorities.

Damien's chapter addresses the governmental side of community development, highlighting the difficulties that faced the Aboriginal shire councillors in Wiluna following changes to the property franchise provisions in Western Australia in the mid 1980s. Sylvia exposes the Aboriginal dimension of government — one which Marcia Langton refers to in her paper as the 'Aboriginal domain'. Sylvia explains how the Aboriginal jurisdictions cut through the artificial boundaries which were imposed on Yanangu people by white settlement. She has lived in Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara Lands for most of her life, and she uses her experience as a member of the executive of the Anangu Pitjantjatjara organisation to explain the complex interrelationships that have developed between the Aboriginal structures of governance and other levels of government. Central planning is almost impossible in the Australian system and, because different governments occupy the same jurisdiction, power is divided. It is therefore not surprising that the states are viewed with suspicion. Local governments seem to have the capacity to be creative

but, as these chapters suggest, they are only creative if they are enlisted by a creative Aboriginal community.

Noel Pearson's chapter in part 6 draws the native title debate sharply back into focus at a national level. He argues that colonial law has had a negative impact on Aboriginal Law and there is a critical need to develop strategies that can be used to secure the integrity of Aboriginal Law against erosion by the oppressive nature of colonial law. This is a theme that Michael Mansell has espoused although — and he has argued these points somewhat more provocatively in the past — the colonial regime has absolutely no legitimate claim over the sovereign rights of Aboriginal people. He suggests that there is a great deal of potential for Aboriginal self-government across Australia; different communities will want to strike agreements to suit their own needs although, ultimately, Aboriginal people need to be mindful of building flexibility into their arrangements with governments to avoid closing off their future options.

In Aboriginal policy-making, the politics of oppression are, by and large, a product of state governments. In Rob Riley's view, the most obvious example is the Western Australian government. The general direction of the Aboriginal native title debate in Australia is fragmented by two different public perspectives: on the one hand, there are those that couch their claims in terms of the economic virtues of the resource industry; on the other are those that point to the principles of human rights.

The final two chapters are by Paul Tennant and Cliff Walsh. Paul Tennant's paper is a compressed history of the Indian treaty process in British Columbia (BC) on the west coast of Canada. He has considerable experience in the BC Treaty Commission process itself. Although the institutional arrangements between governments in Canada and those in Australia are quite different, many of the governing principles — self-determination and native title — are the same and this makes Paul's chapter very relevant to the overall volume. Finally, Cliff Walsh brings his expertise to bear on the theme and wraps up the essential elements of debate. Cliff's expertise on the European Commission's economic committee and his role as an industry commissioner makes for rich analysis of a very intense collection of papers. He concludes on an optimistic note.

Aboriginal native title has become the reference point for some of the most fundamental principles of government in Australia. The public debate has varied from state to state but, outside of qualified support from some quarters in Queensland and the Northern Territory, there seems to be a considerable distance between the demands of Aboriginal and Torres Strait Islander peoples and the line pushed by many public officials. Hopefully, the views of the Aboriginal people in this volume will clarify some of the issues.

Those who contributed to the conference did so either by writing a paper in advance or by presenting their views directly. But the conference was led as much by the participants who attended as by those who presented papers. There were any number of people who assisted in holding the conference together. Some people, for example Pat Turner, volunteered advice on protocol, and others offered help on local matters. Dozens of Townsville people assisted, and a number of people from the Aboriginal and Torres Strait Islander Commission regularly gave advice. People from the Aboriginal and Torres Strait Islander Electoral Information Service, particularly those from Townsville and Broome, played an important role and, in terms of promoting the conference in Ngaanyatjarra Lands (Warburton region) Damien McLean and Peter Rapkins threw their unwavering support behind the conference. The administration and organisation would not have been possible without the generous support of the director of the Federalism Research Centre, Brian Galligan, and centre staff Stephanie Hancock.

Christine Fletcher

January 1994

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