# EXPERIMENTAL GOVERNANCE IN AUSTRALIAN INDIGENOUS AFFAIRS: FROM COOMBS TO PEARSON VIA ROWSE AND THE COMPETING PRINCIPLES
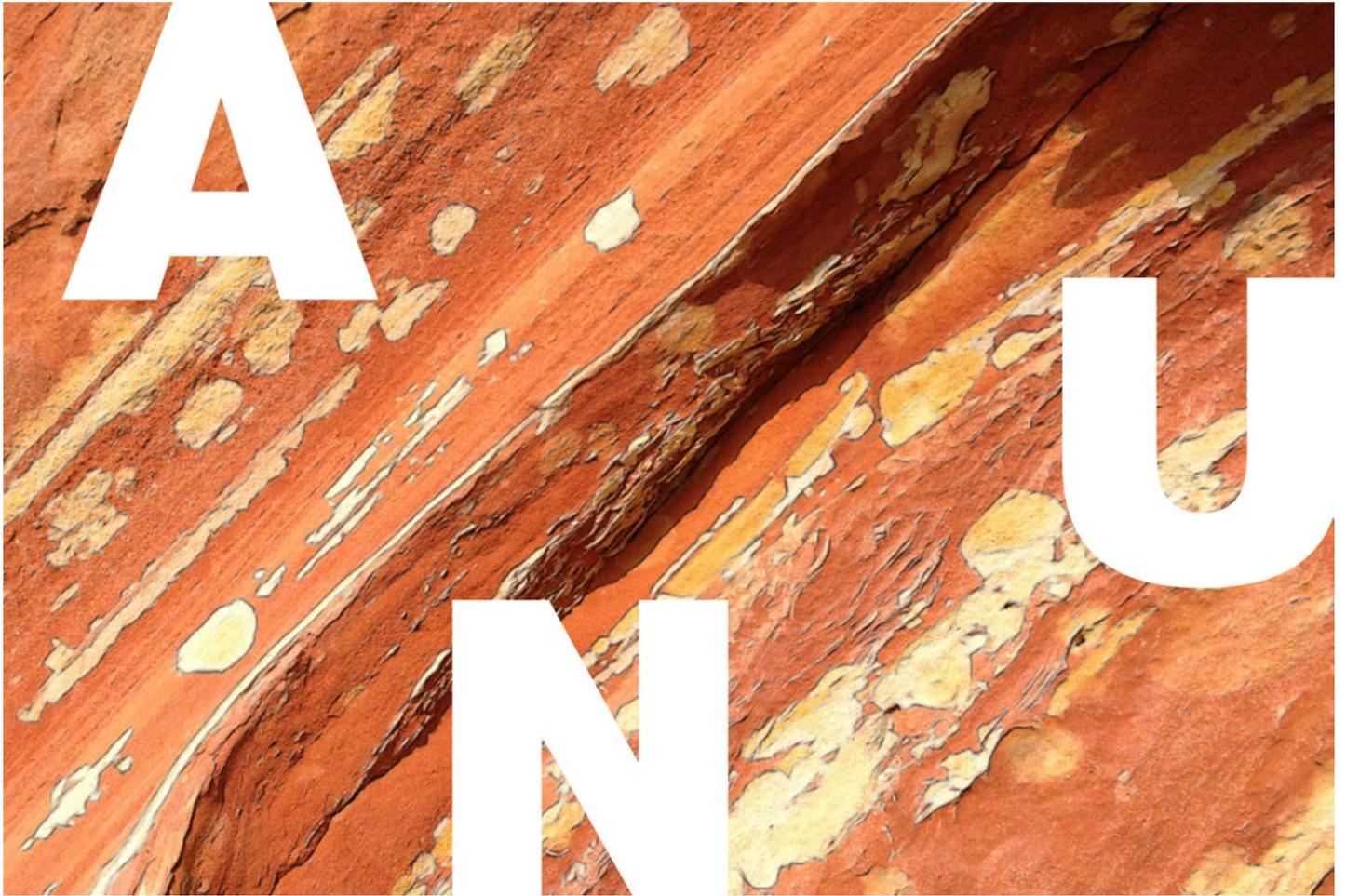
W. SANDERS

# Series Note

# Experimental governance in Australian Indigenous affairs: From Coombs to Pearson via Rowse and the competing principles

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## Abstract

The competing principles framework for analysing Australian Indigenous affairs is revisited, starting with Rowse on 'the Coombs experiment'. Rowse rehabilitates this term from pejorative critics, arguing that all government policy in Indigenous affairs is experimental. The task becomes one of characterising changing patterns of government experiment since the Commonwealth became involved in Indigenous affairs on a national scale after the 1967 constitutional alteration referendum. This paper develops a two-phase characterisation, changing from the millennium. The first phase is discussed under the heading 'Indigenous-Specific Structures and Programs', the second under the heading 'Welfare reform, Contractualism and Normalisation'. The name Pearson is as synonymous with the second phase as Coombs is with the first. Rowse has much to offer on both these prominent personalities and phases, as well as a complementary schema to the competing principles focused on peoples and populations.

**Keywords:** Indigenous policy, equality, difference, choice, guardianship, peoples, populations.

## Acknowledgments

## Acronyms

| | |
|---|---|
| ANU | The Australian National University |
| ATSIC | Aboriginal and Torres Strait Islander Commission |
| CAEPR | Centre for Aboriginal Economic Policy Research |
| CDEP | Community Development Employment Projects |
| CHIP | Community Housing and Infrastructure Program |
| CYIPL | Cape York Institute for Policy and Leadership |
| DAA | Department of Aboriginal Affairs |
| DEWR | Department of Employment and Workplace Relations |
| FAHCSIA | Department of Families, Housing, Community Services and Indigenous Affairs |
| NPARIH | National Partnership Agreement on Remote Indigenous Housing |
| RJCP | Remote Jobs and Communities Program(me) |

# Contents

# Tables and figures

## Introduction

'The Coombs Experiment' was the title given by Tim Rowse to a 2010 lecture on the contribution of H.C. Coombs to Commonwealth Indigenous affairs policy in the quarter century after the 1967 'Aboriginals' constitutional alteration referendum and legislation. The phrase was not Rowse's own, but one gleaned from recent critics of Coombs, starting with Geoffrey Partington in 1996 and the likes of Gary Johns and Helen Hughes in the post-millennial period. Rowse's purpose was only partly to defend Coombs from the 'caricature' and 'political hubris' of these 'revisionist policy intellectuals', with his 'antidote' of some 'competent biography' (Rowse 2012d: 183). The more substantial purpose of Rowse's lecture was to argue that Indigenous affairs policy in a colonial, settler-majority society like Australia is inevitably and correctly 'experimental'. To call Coombs experimental is no longer 'pejorative', but simply positions him in a longer historical tradition. As Rowse puts it:

> The Coombs experiment has been a chapter in a longer experiment that British people initiated by colonising this continent; that longer experiment is a continuing self-interested exploration of the ways in which Aboriginal and non-Aboriginal Australians are similar and different (Rowse 2012d: 196).

Every 'project of government' in Indigenous affairs, Rowse argues, is an 'exploratory testing of the relative significance of human sameness and cultural difference between Aboriginal and non-Aboriginal Australia' which produces 'knowledge' in need of 'interpretation' (Rowse 2012d: 174–5, 196).

In this paper, I explore further Rowse's idea that Indigenous affairs is an ongoing series of experiments in human sameness, or equality, and cultural difference. I trace the changing forms of those experiments in the period of Commonwealth involvement in a national role since 1967. I divide the period into two phases: an initial, exploratory three decades to the 1990s, then a revisionist phase since the millennium. For a conceptual frame, I revisit a triangular schema of competing principles that incorporates, but goes beyond, the dichotomy of equality and difference (Sanders 2010). By considering whether difference is seen positively or negatively, the schema also introduces the principles of choice (or autonomy) and guardianship (or protection). I argue that the balancing of these competing philosophical principles has changed from the first three decades of Commonwealth involvement in Indigenous affairs on a national scale to the post-millennial period. There have, as a consequence, been some significant changes in the forms of

government experiment during these two modern, federal phases of Indigenous affairs. The first phase, in which H.C. Coombs was prominent, is discussed under the heading 'Indigenous-Specific Structures and Programs'. The second phase, in which Noel Pearson is prominent, is discussed under the heading 'Welfare Reform, Contractualism and Normalisation'. Some conceptual assistance in telling this history is drawn from Rowse, whose work offers insights on Coombs and Pearson, as well as some ideas for refining the competing principles framework by identifying two idioms of social justice focused on peoples and populations.

## Competing principles of equality, choice and guardianship

The dominant principle in Australian Indigenous affairs has always seemed to me, during thirty years of observation, to be equality or human sameness: that, in some way, Indigenous and settler Australians both are and ought to be equal. The competing idea that Indigenous Australians are historically and culturally different (and that this should be reflected in government policy) can also be argued persuasively but has less power than the equality principle (Sanders 2005, 2008a). Difference can be seen positively—as a reflection of freedom, autonomy and choice—or negatively, as the result of 'powerful structures' of 'social determination' that limit 'opportunity' (Rowse 2002: 7). If difference is seen negatively, this can invoke the competing principle of protection or guardianship which suggests that certain people are not adequate judges of their own best interests and must be guided by others, such as government agents. Fig. 1 is a simple graphic representation of the relationships in Indigenous affairs between these four key concepts of equality, difference, choice and guardianship. The dominance of equality is reflected in its position at the apex of the triangle. Difference is placed at the bottom of the triangle, suggesting its less dominant status, and with positive and negative marks on either side. This leads to the alternative principles of choice at one lower point of the triangle and guardianship at the other.[1] I refer to this triangle as the ECG of Australian Indigenous affairs, the source of its animation and life: a deliberate play on the acronym also standing for electrocardiogram.

**FIG. 1.** Competing principles in Australian Indigenous affairs: simple representation

Equality

Choice

Guardianship

+ Dfference –
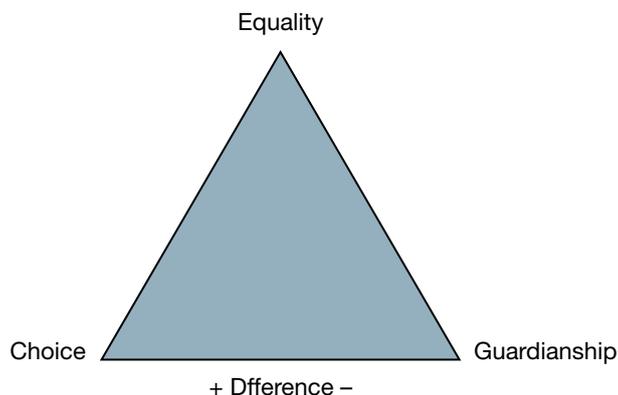
Two elaborations of this simple analytic schema lead to some further refinement. The first is the idea that the equality principle can be interpreted in some very different ways, while the second is that among Indigenous Australians there can be different levels of 'choosing selves' or actors, ranging from the individual person and family or household to the 'organized communal agency' (Rowse 2002: 19). Two competing interpretations of the equality principle are individual legal equality and socio-economic equality measured among population sub-groups. The former is placed on the right of the triangle half way down from the apex, and the latter in a similar position on the left of the triangle. While these are testable interpretations of the equality principle, the interpretation of equality placed at the apex of the triangle is the more philosophical (and less testable) idea of equality of opportunity (see Fig. 2).

**FIG. 2.** Competing principles in Australian Indigenous affairs: elaborated representation

Equality of opportunity

Socio-economic equality in population subgroups (& guardianship?)

– Individual & household + difference

1960s

Individual legal equality (& choice)

1930s

Group choice/ autonomy

Group guardianship

+ Group difference – and diversity
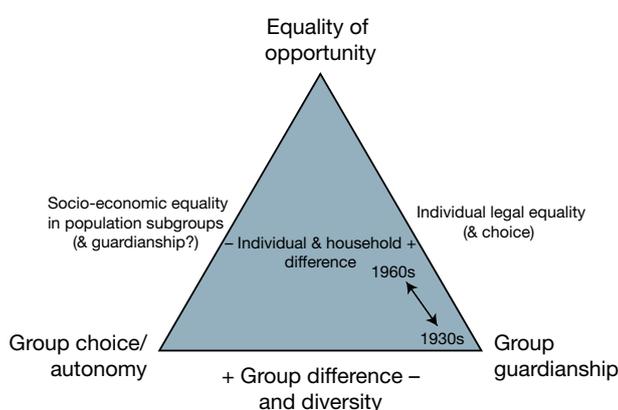
These competing interpretations of the equality principle in the top quarter of the triangular analytic schema are largely about Indigenous actors who are individual persons and family households, aggregated for measurement into population sub-groups. At the

bottom left of the triangle, by contrast, the Indigenous actors tend to be self-identified corporate groups, such as organisations, settlements, communities or even 'peoples' (Rowse 2012b). There is also a corporate character to the groups identified for protection and guardianship in the bottom right of the triangle, although these are more likely to be externally defined than self-identified (see Fig. 2).

Another feature of Fig. 2 is that, in the middle of the triangle, at the level of individual or household actors, the positive and negative views of difference are reversed from those at the base of the triangle involving group choice and guardianship. The individual legal equality interpretation tends to see individual and household difference quite positively, as the result of freedom and autonomy, whereas the socio-economic equality interpretation tends to see such difference more negatively, as the result of such things as social determination and lack of opportunity. It would seem, therefore, that the choice and guardianship principles may be on *opposite* sides of the triangle at the level of individual and household actors compared with the lower level involving corporate groups (see Fig. 2). There may thus be *two* ECG triangles in the Indigenous affairs policy space, with reversed polarities around valuations of difference at the different levels of Indigenous actors. Interpretations of difference are thus quite complex on both the left and right sides of the Indigenous affairs policy space, depending on the level of Indigenous agency being considered.[2]

This elaborated left–right triangular model of the Indigenous affairs policy space represented in Fig. 2 has taken some time to develop and may not yet have reached its final form. It is an analytic schema that has grown from thirty years observing Australian Indigenous affairs and reading other people's work, most particularly Rowse's. In the history that follows, I argue that dominant debates in Indigenous affairs policy have occupied different parts of this triangular space during the two experimental phases of Commonwealth involvement in Indigenous affairs in a national role up to the 1990s and since the turn of the millennium. As a prelude, a final addition to Fig. 2 is to suggest that, in the three decades before the 1967 referendum, dominant debates and government experiments in Australian Indigenous affairs moved from group protection in the bottom right of the triangle to individual legal equality higher on the right side of the triangle. In a somewhat mechanical way, all references to Aboriginals were removed from the Commonwealth Constitution in 1967, thereby achieving a high point for the principle of individual legal equality.[3] The effect of this removal was to extend the

Commonwealth's 'race' power at section 51(xxvi) to cover laws relating to Aboriginal people in the various States, thereby giving the Commonwealth a clear head of constitutional power on which to build its nationwide involvement in Indigenous affairs. The Commonwealth's previous involvement had been through its Territories, under section 122 of the Constitution. Most substantially, this had been in the Northern Territory, surrendered to the Commonwealth by South Australia in 1911. Among Australian subnational jurisdictions, the Northern Territory has long had by far the highest Aboriginal proportion of population, due largely to a small settler population. Being the government for the Northern Territory from 1911 thus endowed the Commonwealth with a *leading* role in Australian Indigenous affairs, but not a *national* role.

## Indigenous-specific structures and programs: experiments until the 1990s

After the 1967 referendum, the Commonwealth began exploring its new national role by establishing a small Council for and Office of Aboriginal Affairs within the Prime Minister's portfolio. This was done under Prime Minister Holt on the advice of H.C. Coombs, who became chair of the new three-man Council. After Holt's untimely death at the end of 1967, under Gorton as Prime Minister from 1968 to 1971, a new minister-in-charge of Aboriginal affairs was placed between the Office and Council and the Prime Minister. Under McMahon in 1971–72, the Council and Office were moved outside the Prime Minister's portfolio into a new Department of Environment, Aborigines and the Arts. Coombs disapproved of both these moves away from the Holt model, but continued as chair of the Council for Aboriginal Affairs throughout this time and on until it was abandoned in 1976 (Coombs 1978: 1–25; Rowse 2000: 17–33).

In the Commonwealth Parliament during 1968, an Aboriginal Enterprises (Assistance) Act and a State Grants (Aboriginal Advancement) Act were passed, clearly using the Commonwealth's extended constitutional power. While the first of these pieces of legislation was passed just once, the second became an annual event, identifying a Commonwealth budget for working with the States on Indigenous issues until 1974 (McCorquodale 1987: 9–11).

These pieces of legislation and the Office and Council were experiments in Indigenous-specific structures and programs within the Commonwealth machinery of government. The next three decades of Indigenous affairs were characterised by a preference for such

structures and programs. Initially, under these Coalition governments, these experiments were undertaken in cooperation with the States. However, from the election of the Whitlam Labor government in December 1972, these experiments increasingly involved the Commonwealth in direct relationships with groups of Indigenous people that bypassed the States and, in the Northern Territory, bypassed elements of the Commonwealth's own established regional administration.

To facilitate these new direct relationships with groups of Indigenous people, the Whitlam Labor government established a new Department of Aboriginal Affairs (DAA). In the Northern Territory, where the Commonwealth had full power as the subnational government as well, DAA simply incorporated the Territory Welfare Branch, which had previously dealt with Aboriginal issues. In the States, negotiations to transfer staff and responsibilities to DAA occurred under the *Aboriginal Affairs (Arrangements with the States) Act 1973* and came to fruition in all States except Queensland (Sanders 1991). In line with these major changes, Commonwealth expenditure on 'Aboriginal assistance' grew from around $30 million in 1971–72 to almost $160 million in 1974–75, with the proportion spent on 'Grants to the States' decreasing from one-third to one-quarter (DAA 1975: 58–59; 1977: 50–51). The increasing proportion of this rapidly growing Commonwealth expenditure was directed to Aboriginal community-based organisations in areas such as housing, health, community infrastructure, education, employment and legal aid. To facilitate this expenditure, and other Indigenous community affairs, the Whitlam government investigated the possibility of an incorporation statute specifically for Indigenous groups. The *Aboriginal Councils and Associations Act 1976* was duly passed by the Commonwealth Parliament, although not until the first year of the Fraser Coalition government. One further experiment of the Whitlam government was to establish an advisory National Aboriginal Consultative Committee, elected by Indigenous people from across Australia. First elected in November 1973, this first national Indigenous representative body had a tense relationship with the Whitlam government, leading to its being reviewed in 1976 under the incoming Fraser government (Hiatt 1976; Weaver 1983). This Coalition government also saw the sense of an elected national Indigenous representative body and, after the review, devised a lightly restructured National Aboriginal Conference, which went on to have two rounds of elections in 1977 and 1981 (Loveday & Jaensch 1982; Weaver 1983).

Another area of Indigenous-specific experimentation that spanned the terms of the Whitlam Labor and Fraser

Coalition Commonwealth governments was in the recognition of land rights. Whitlam established a Royal Commission to inquire into how Aboriginal land rights would be recognised. This focused on the Northern Territory, where the Commonwealth had full constitutional power, but also sought to establish a framework that could be taken up by the States (Whitlam 1985: 470). The direct outcome was the *Aboriginal Land Rights (Northern Territory) Act 1976*, also passed by the Commonwealth Parliament during the first year of the Fraser government. More indirectly over the next decade and a half, Aboriginal land rights statutes applying to five States were developed—in South Australia (1981, 1984), New South Wales (1983), Victoria (1987, 1991), Queensland (1991) and Tasmania (1995) (Nettheim, Meyers & Craig

2002: 237–317). Common law 'native title' was also discovered through the Mabo case decided in the High Court in 1992, which, through the subsequent *Native Title Act 1993*, led to an underlying national Commonwealth system of Indigenous rights in land that covered Western Australia as well (Russell 2006; Stephenson & Ratnapala 1993). After the 1996 Wik case, the co-existence of native title rights with other land tenures was also seen as possible, prompting amendments to the Native Title Act in 1998 (Brennan 1998). The extent of Indigenous-specific rights to land is still being determined through claims processes overseen by tribunals and courts, but by 2012, these had led to Indigenous people holding 22 per cent of the Australian continent, and having some say over land use in a further 24 per cent (see Fig. 3).

**FIG. 3.** Land held by Indigenous people or subject to non-exclusive Indigenous rights, 2012



**Legend**

■ Indigenous held lands and exclusive possession native title

□ Indigenous Land Use Agreements and non-exclusive possession native title

Source: Altman and Markham (2015).
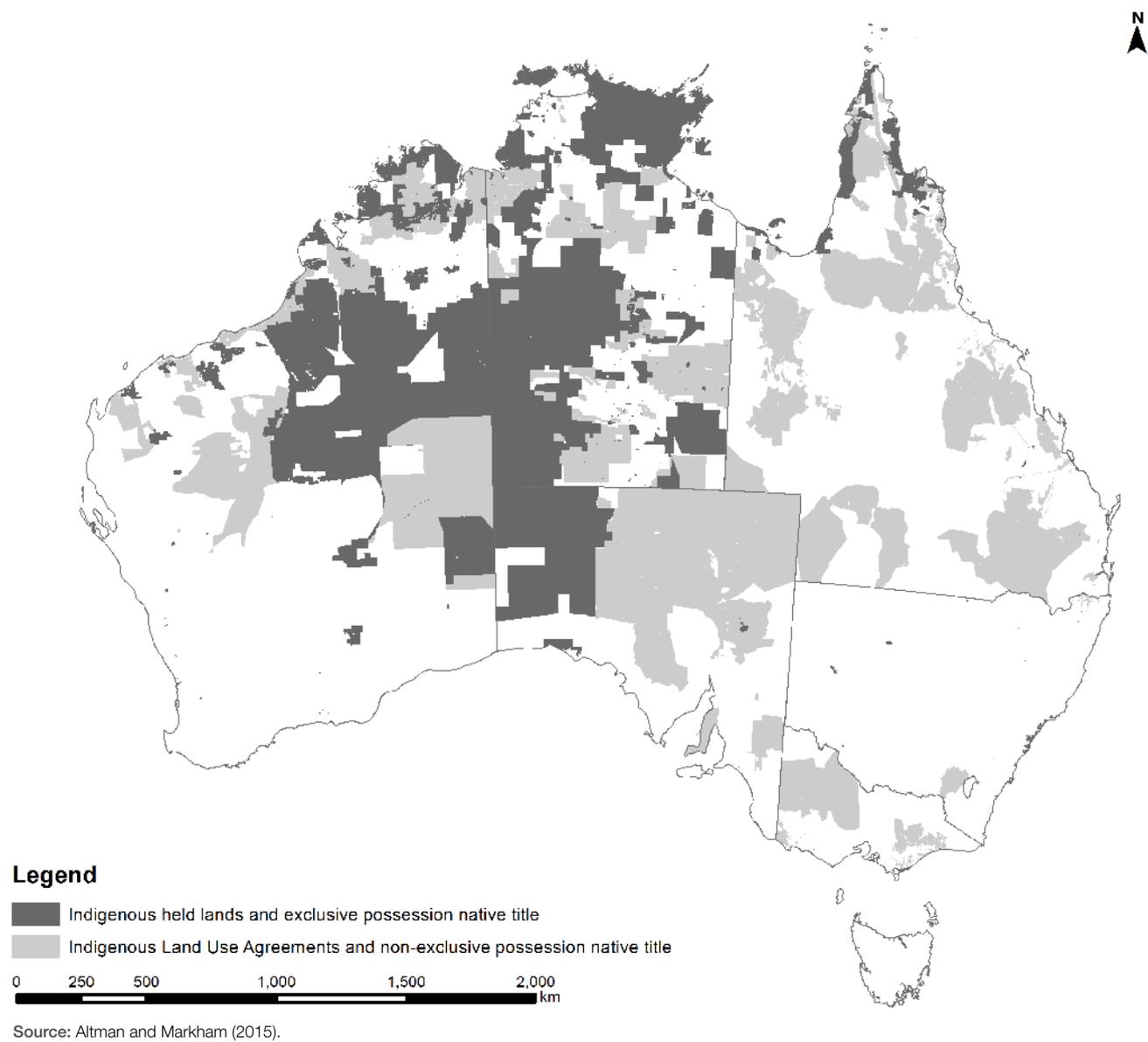
Returning to the 1970s, it is important to note the emergence of at least one other Indigenous-specific program, the Community Development Employment Projects (CDEP) scheme. Rowse has argued that this program, developed in 1977, was H.C. Coombs' clearest influence on policy (Rowse 2012d: 178–9; see also Sanders 2012). CDEP was an alternative to the payment of unemployment benefits to Aboriginal people in remote areas, which was becoming widespread during the 1970s under the influence of ideas of non-discrimination and equal individual rights (Sanders 1985). Concerns about this extensive spread of unemployment benefits were substantial, and Coombs and DAA imagined a group-based alternative under which Aboriginal organisations would employ community members part-time for the equivalent of their social security entitlements (Coombs 1978: 202–3). This would give Aboriginal community organisations a degree of autonomy through a workforce and guaranteed funding. The Fraser Coalition government embraced the Coombs/DAA idea of CDEP for a trial list of remote Aboriginal communities, but faced ongoing resistance from other Commonwealth departments, unions and the Labor opposition (Sanders 1988). By Labor's return to government in 1983, however, CDEP had bipartisan support. Over the next few years it was the Hawke Labor government that presided over the expansion of CDEP, not only to any remote Indigenous community that wanted it, but to nonremote Indigenous communities as well. CDEP became the DAA's largest single budget item, accounting for one-quarter of expenditure by 1989–90 (Sanders 1993).

The 1990s saw an even bolder Commonwealth experiment with Indigenous-specific structures and programs—the Aboriginal and Torres Strait Islander Commission (ATSIC). This Commonwealth statutory authority replaced DAA and combined it with a new structure of elected Indigenous representatives, building up from regional councils and zones to national commissioners. These executive and elected arms of ATSIC operated under a Commonwealth minister but were given considerable autonomy over the allocation of their budget and other decisions (Tickner 2001). Some argued from the outset that ATSIC would experience unresolvable tensions under the direction of both elected Aboriginal representatives and a minister (Wettenhall 1989). But in many ways ATSIC managed these tensions, and others, remarkably well for over a decade (Sanders 1994, 2004; Sullivan 1996). ATSIC was a bold experiment in Indigenous self-determination, which was both within government but also allowed elected Aboriginal representatives considerable independence. Internationally, ATSIC became an accredited Non-Government Organisation at the United Nations in 1995,

while domestically, ATSIC decentralised some of its decision making to its elected regional councils. Like DAA before it, ATSIC ran Indigenous-specific programs, like CDEP and its large Community Housing and Infrastructure Program (CHIP), which were consciously adapted to the different circumstances of Indigenous people across Australia. ATSIC's strategic challenge, like DAA's before it, was to run these Indigenous-specific programs as supplements, while also encouraging line departments at all levels of Australian government to service Aboriginal citizens (Altman & Sanders 1995).

The relationship between DAA's and ATSIC's Indigenous-specific programs and line government departments was often complex. Many of these line departments also developed Indigenous-specific programs to supplement Indigenous access to their general programs. For example, a major Aboriginal Study Grants scheme had been developed around 1970 and remained located in the Commonwealth's education department throughout the lives of both DAA and ATSIC, despite these latter also developing Indigenous-specific education programs. In health, tension grew during the 1980s over the respective roles of the Indigenous-specific and line agencies, with DAA and later ATSIC for a while given a lead role. By the mid 1990s, however, community-based Indigenous health organisations wanted Indigenous-specific health programs transferred from ATSIC to the Department of Health, and the Keating Labor government obliged, much to the consternation of many within ATSIC (Anderson & Sanders 1996). Budget-related papers of the period showed that Commonwealth expenditure on Indigenous-specific programs was about half from line departments, and half from ATSIC and other small Indigenous-specific agencies (Tickner 1992). The big spenders among line departments were employment and education, with Indigenous-specific expenditure through the health department increasing rapidly after 1995 (Herron 1998).

All these experiments with Indigenous-specific structures and programs from the 1970s to the 1990s were undertaken in the name of self-determination or self-management and also, to some extent, as restitution for past colonial injustices (Sanders 1982, 2000). In the triangular analytic schema, they occupied a space towards the bottom left in which group autonomy or choice was emphasised, sometimes to the extent of people-hood. But these experiments also had to compete with some very strong ideas about pursuing socio-economic equality between Indigenous and settler Australians as population sub-groups, as measured in instruments like the census (Altman 1991; Australian Government 1987). For this reason I depict the Indigenous affairs policy debates of the 1970s to 1990s as occupying

the left three-quarters of the triangle, stretching from individualised equality of opportunity at the apex, to population-based socio-economic equality halfway down and group autonomy and peoplehood at the bottom left, while also occasionally still referencing equal individual legal rights (see Fig. 4). This range of competing principles encompassed large areas for debate, but in retrospect possibly not large enough as it omitted the guardianship principle at the level of Indigenous groups. Debate also covered the respective roles of Indigenous-specific and general programs, and their location in Indigenous-specific or line government agencies.

**FIG. 4.** Competing principles in Australian Indigenous affairs: dominant debates of the 1970s–1990s
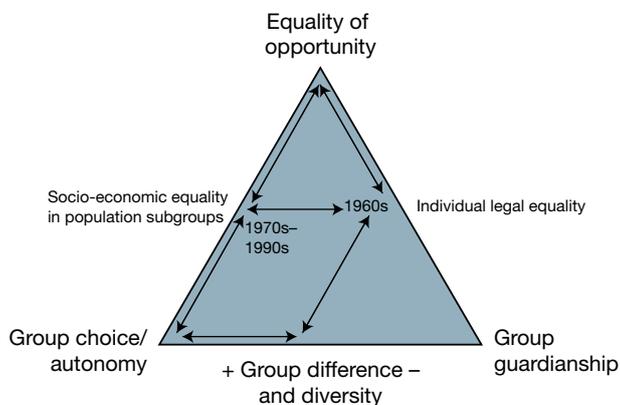


This pattern of debate in Australian Indigenous affairs began to change under the Howard Coalition Commonwealth government elected in 1996. The new government deferred from 1996 until 1999 a provision for electing, rather than appointing, the ATSIC Chairperson (Sanders, Taylor & Ross 2000). In the name of public accountability, the new minister also started to restrict the autonomy of the ATSIC Board in making funding and other decisions (Ivanitz 2000). By 1998, the Howard government had also abandoned Australia's support for the term 'self-determination' in the Draft Declaration on the Rights of Indigenous Peoples, which was slowly emerging through the United Nations Working Group on Indigenous Populations (Dodson & Pritchard 1998). However, perhaps the clearest sign of change in Indigenous affairs debates came not from within the Howard government, but from a Cape York Aboriginal leader who had emerged on the Queensland and national stages during the 1990s—Noel Pearson. A lawyer and historian, Pearson had been central to negotiations over native title legislation between the Commonwealth and Indigenous people both during 1993, in the wake of the Mabo decision, and in 1997–98 after the High Court's Wik decision (Brennan 1998; Goot & Rowse 1993). After this focus on land law in the 1990s, Pearson turned his

attention to what he saw as the pressing and neglected issue of long-term Aboriginal dependence on welfare. In a self-published essay in 2000, directed as much to his Aboriginal compatriots in Cape York as to governments, Pearson began with the following contention:

> If we are to survive as a people
>
> We have to get passive welfare out of Aboriginal governance in Cape York Peninsula
>
> We have to get rid of the passive welfare mentality that has taken over our people (Pearson 2000: 3).

This was the beginning of some very substantial changes in Australian Indigenous affairs policy debates.

## Welfare reform, contractualism and normalisation: experiments after the millennium

Pearson provided a powerful and persuasive analysis of what had gone wrong in Indigenous affairs over the decades leading up to the millennium. Interestingly, his analysis was not directed against the policies of the 'self-determination' era, but rather to the slowly emerging perverse consequences of equal individual rights:

> After we became citizens with equal rights and equal pay, we lost our place in the real economy. What is the exception among white fellas—almost complete dependence on cash handouts from the government—is the rule for us. There is no responsibility and reciprocity built into our present artificial economy, which is based on passive welfare (money for nothing) (Pearson 2000: 5).

Pearson saw restoring 'traditional values of responsibility' as the way out of this predicament, and he saw this as part of the 'struggle for rights', including self-determination—'the right to self-determination is ultimately the right to take responsibility' (Pearson 2000: 5). He argued that Aboriginal people did not have 'a right to passive welfare' and that they should 'no longer accept it'. Rather they had a 'right to build a real economy' (Pearson 2000: 5).

Pearson developed a high public profile advocating these ideas in the immediate post-millennial period, including giving the inaugural Charles Perkins Memorial Oration at Sydney University with a very confronting title (Pearson 2001). Developing a program for policy change based on this analysis was a further challenge, and in 2004, to help

do so, Pearson established the Cape York Institute for Policy and Leadership (CYIPL) as a Cairns-based offshoot of Griffith University. Also in 2004, the Howard Coalition government received an unexpected opportunity from the Latham Labor opposition, which responded to a review of ATSIC by declaring that, if elected to government later that year, Labor would abolish ATSIC, its own creation of 15 years earlier. Howard seized this opportunity, declaring ATSIC a 'failure' as an elected Indigenous representative body that would be 'abolished' forthwith and its programs 'mainstreamed' to line government departments (Howard & Vanstone 2004). Pearson's commentary of the time (2004a, 2004b) identified some significant weaknesses in ATSIC and did not resist its abolition. This distanced Pearson from many of his Indigenous compatriots, who were more inclined to defend ATSIC now that it was under attack.[4] Pearson's stance also indicated his ongoing willingness and determination to work with the Howard Coalition government on welfare reform.

These events in 2004 marked the outbreak of a 'generational revolution' in Australian Indigenous affairs (Sanders 2008b). This involved a re-engineering of Indigenous-specific structures and programs within the Commonwealth government and a move towards a greater alignment with general programs. Indigenous-specific structures and programs did not disappear, but were pushed in various ways towards greater 'normalisation' (Sullivan 2011). I will illustrate this argument by recounting what happened to ATSIC's two big-budget programs, CDEP and CHIP, after they were assigned to line government departments in 2004.

CDEP was the subject of two rounds of review and reform while based in the Department of Employment and Workplace Relations (DEWR) from July 2004 until the fall of the Howard Coalition government in November 2007. Each round was built on a discussion paper proposing reforms after consultations (DEWR 2005a, 2005b, 2006). The net effects of the reforms, which changed little after consultations, were threefold. One was to cease CDEP in urban areas, reducing participant numbers by 7,000 (out of 35,000) from July 2007. A second was to bring treatment of CDEP participants more in line with that of job-seekers in DEWR's general system of outsourced employment services, the Job Network. A third was to change the funding of CDEP provider organisations from July 2006 to a competitive, multiyear contract (Sanders 2007). This last was a very significant change from the annual grant funding of ATSIC and DAA, through which the vast majority of CDEP organisations had been loyally supported over many years as major contributors to their communities. DEWR exposed the Indigenous-specific CDEP providers for the first time to the new

public management of periodic, competitive contracting out of government services, which had so dramatically transformed general employment services in Australia a decade earlier (Considine 1999).

With the election of the Rudd Labor Commonwealth government in late 2007, CDEP was moved out of DEWR into the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). The pace of reform now quickened, with three ministers spanning two departments authoring the next review discussion paper (Gillard, Macklin & O'Connor 2008). The resulting changes brought CDEP more in line with payments in the social security system and also moved it away from being regarded as employment. From July 2009, new participants would no longer be employed by their CDEP provider, but rather would be Newstart Allowance[5] recipients within the social security system while undertaking CDEP activities. CDEP was slowly being converted from a very distinctive Indigenous-specific program to a remote-area version of the general Work-for-the-Dole program introduced in 1997.

The final step in this process of reducing CDEP's distinctive characteristics as an Indigenous-specific program was a review of 'participation and employment' services more generally in remote areas in 2011. Another discussion paper authored by three ministers suggested that CDEP should be 'integrated' with three other employment programs in remote areas, one Indigenous-specific and two general. A 'single provider' would be funded to make participation and employment services 'simpler' and 'flexible enough to encourage providers and communities to be innovative' (Arbib, Macklin & Ellis 2011: 8). Thus emerged in 2012 the Remote Jobs and Communities Program (RJCP), with a single provider for each of 60 remote regions across Australia, contracts for which would begin in July 2013 (Macklin, Shorten & Collins 2012). This general, remote-area employment and community participation program subsumed the previous two general and two Indigenous-specific programs, and all that remained of CDEP was a few thousand 'grandfathered' (pre-July 2009) participants allowed to stay on wages for a few more years.

The post-2004 reform of ATSIC's other big-budget, distinctive, Indigenous-specific program—CHIP—was also a story of normalisation towards general program structures.

With the abolition of ATSIC, CHIP went to a department called Families and Community Services. Early in 2006, with a new minister, this department had 'Indigenous Affairs' added to its name, and then in late 2007, at the

time of the election of the Rudd Labor government, 'Housing' was identified within it as a distinct ministerial responsibility. This department commissioned an external review of CHIP, which in early 2007 comprehensively condemned it. The review argued that the 616 Indigenous Community Housing Organisations then managing 21,000 dwellings across Australia had, for a number of reasons, 'not been able to maintain housing assets' (PricewaterhouseCoopers 2007: 19). CHIP, it judged, 'has not worked and cannot work' (PricewaterhouseCoopers 2007: 17). A 'new strategic framework' was recommended that would, among other things:

> 4. Increase the supply of public housing through transfer of community housing to public housing agencies where possible …

> 8. Continue the shift away from building housing on 'on country' outstations and homelands and focus on building new housing where there is access to education, health, law and order and other basic services …

> 20. Foster homeownership on community-title land (PricewaterhouseCoopers 2007: 23–4).

The Coalition minister who received this review endorsed it strongly and in the May 2007 Budget announced a new Indigenous housing program focused on remote areas (Brough 2007a, 2007b). However, it was the incoming Rudd Labor Commonwealth government, elected at the end of 2007, that gave these new arrangements greater shape.

In April 2008, in conjunction with the Northern Territory Government, the Rudd government announced a four-year program of housing investment for the Territory's Indigenous communities, with 'major capital works' in 16 of the more populous communities and 'upgrades' of existing houses in another 57 (Macklin, Henderson & Snowdon 2008). In March 2009 came the announcement of a 10-year National Partnership Agreement on Remote Indigenous Housing (NPARIH) endorsed by the Council of Australian Governments. This would involve the construction of 4,200 new houses in a select group of 'priority communities' in remote areas of the Northern Territory, South Australia, Western Australia, Queensland and New South Wales, and 'upgrades and repairs' for another 4,800 more widely dispersed existing dwellings (Macklin 2009a). The 'pre-condition' for this investment was that the Commonwealth required 'security of tenure' in order 'to protect assets and establish with absolute clarity who is responsible for tenancy management and ongoing repairs and maintenance' (Macklin 2009b: 6). The Commonwealth foresaw State and Territory housing

authorities undertaking these 'normal' responsibilities, with some possibility of contracting out to community housing organisations. It also foresaw Indigenous tenants taking on 'normal tenancy agreements' in the 'drive to rebuild positive community values and behaviour' (Macklin 2009b). These high housing hopes of the Commonwealth in 2008 and early 2009 soon confronted some hard Territory and State government realities, which meant that new construction and repairs were slow to commence. Undaunted, the Commonwealth presided over a 'renegotiation' of NPARIH in late 2009, introducing an element of competition for funding between the subnational jurisdictions from mid 2010 (Rudd & Macklin 2009).

While these two large and very distinctive Indigenous-specific programs from the self-determination era were undergoing reforms that were gradually making them more like general housing and employment programs run by line departments, other developments in Indigenous affairs were engaging with the idea of 'normalisation' in a rather different way. Primary among these was the June 2007 Northern Territory Emergency Response, which saw the Commonwealth pass five pieces of legislation within six weeks and re-intervene in Indigenous communities in the Territory in a way not seen since before the granting of limited Territory self-government in 1978 (Altman & Hinkson 2007; Heatley 1990). Four of these pieces of rushed legislation related specifically to the Northern Territory. The fifth was social security legislation establishing the possibility of 'income management regimes', not only in 'declared' areas of the Northern Territory but also in Cape York and potentially elsewhere in Australia. The legislation for these regimes was controversial as it specifically excluded them from the operation of the Commonwealth's *Racial Discrimination Act 1976* (Standing Committee on Legal and Constitutional Affairs 2007: 5–6, 13–15). These income management regimes related to Pearson's welfare reform agenda, which had in the previous three years been further developed by CYIPL. It is to this that I turn before relating these developments back to the triangular analytic schema.

In May 2007, CYIPL produced its 'Design Recommendations' for a 'Welfare Reform Project' in four Indigenous communities in Cape York. The document combined Pearson's style of historical argument with some slightly more economic analysis and a touch of social psychology (CYIPL 2007). The 'capabilities' approach was adopted from the development economics of Amartya Sen, and there was talk of having 'rational incentives', as well as laws, so that individuals and families would be encouraged to ascend a 'staircase

of opportunity' through their own 'choice' (CYIPL 2007: 35). Internalised 'social norms' were added from social psychology as an even more 'influential' driver of 'behaviour' (CYIPL 2007: 41). A Family Responsibilities Commission was recommended in each trial community, enacted under a Queensland statute, to 'enforce obligations' on recipients of 'conditional' welfare payments to 'rebuild social norms' (CYIPL 2007: 49). Also a 'welfare pedestal' was identified that Indigenous people would have to 'climb off' in order to 'join the real economy' (CYIPL 2007: 73). CDEP was seen as part of this 'welfare pedestal' as it provided jobs that 'look and feel' real, but 'with few of the associated disciplines and benefits' (CYIPL 2007: 74). Low-cost ('or even no cost') 'welfare housing' was also seen as part of 'passive welfare', which would have to be reformed through 'home ownership' or at least through 'normalised' tenancies (CYIPL 2007: 108).

These CYIPL positions in 2007 were a significant development from Pearson's earlier work. In 2000, Pearson had supported CDEP as based on the 'reciprocity and responsibility' that he advocated, even if in practice in some communities CDEP had fallen back to being 'not very distinguishable from the dole' (Pearson 2000: 87–8). Housing was not discussed at all in Pearson's earlier work, so the critique of low-cost social housing as part of 'passive welfare' was also a significant development in the CYIPL analysis.

A month after the publication of CYIPL's major report, Pearson and CYIPL backed the Commonwealth's emergency intervention into the Northern Territory and used the rushed legislation to establish an income management regime for their welfare reform project, complementing the Family Responsibilities Commission being developed under Queensland legislation. They also backed the changes being made to CDEP under DEWR in 2007, and those that were to follow under FaHCSIA in 2009. Their support for reforms to remote Indigenous housing under NPARIH was perhaps somewhat less clear, but this did not stop their four Cape York communities all being included among the 29 'priority locations' for housing investment announced in April 2009 (Macklin 2009b).[6] In a characteristic 'insider' move (Sanders 2008c), Pearson and CYIPL seemed willing to accept NPARIH's priority construction of new public housing in 2009 and deal later with their preferred idea of private home ownership.

In 2010, the income management regimes established in 2007 were made consistent with the Commonwealth's Racial Discrimination Act. The new regime in the Northern Territory was extended to the whole jurisdiction, rather

than just 'declared' areas, and thereby to non-Indigenous people. The minister promoting the legislation noted that income management was already being applied in two areas of Western Australia, as well as Cape York and the Northern Territory, and that 'non-discriminatory income management' would soon 'be extended nationally to other disadvantaged regions' (Macklin 2010). Pearson strongly supported this legislative change as a 'fundamental shift in policy' back to 'conditional welfare' (Pearson 2010b). This was very different from his commentary on NPARIH housing reform earlier in 2010, which had slammed the re-engineered social housing arrangements in Queensland's Indigenous communities and called, once again, for moves to private home ownership (Pearson 2010a). Since then, a mid-term review of NPARIH has identified that 'breaking through remaining barriers to private home ownership' on Indigenous land is one of the 'challenges' for its remaining five years (NPARIH 2013: 13). That 2013 review also suggested that while 'capital works delivery' quickened after the slow start in 2009–10, 'reformed rent setting and tenant support have not kept pace … in all jurisdictions' and that the 'agreed target for full implementation of property and tenancy management' has been pushed back to 2015 (NPARIH 2013: 12). Normalising Indigenous housing is proving a more complex, long-term intergovernmental process than some other aspects of welfare reform, such as income support and employment services, where the Commonwealth dominates more clearly and can act unilaterally.

Analytically, I argue, these post-millennial policy processes have shifted dominant Indigenous affairs debates from the left three-quarters of the triangular policy space depicted in Fig. 4 to the right three-quarters shown in Fig. 5. CYIPL's (2007: 36) 'staircase of opportunity'—which can only be ascended when 'individuals and families exercise responsibility'— embraces the idea of equality of opportunity at the apex of the triangle. The 'Closing the Gap' agenda, which was prominent under the Rudd and Gillard Labor Commonwealth governments, suggests that socio-economic equality between population sub-groups is still near the centre of policy debates. The 2010 development of a 'non-discriminatory' income management regime suggests that individual legal equality is also still part of Indigenous affairs policy debates. What has returned to prominence in these recent debates is a renewed emphasis on group guardianship, with those identified for guidance often being described as remote or discrete Indigenous communities. These groups designated for guardianship are often those that, in the earlier decolonising self-determination and land-rights phase of Indigenous policy, were accorded a degree of autonomy

as peoples (Coombs 1994). However, group guardianship in this new policy phase is also often defined in terms of social groups who are seen as vulnerable (e.g. young children, women or the elderly) or at risk (e.g. unemployed youth and the long-term unemployed). The move back to group guardianship has thus also involved some re-imagining of the relevant collectivities of Indigenous social life.

## Populations, peoples and the competing principles

Rowse's recent analysis of Indigenous affairs focuses on two 'notions of social justice' supported by the different 'idioms' of populations and peoples (Rowse 2012b: 7). Peoples, he argues, are 'rights-bearing' entities with 'a distinct identity, heritage, institutions and land base', as well as some 'self-conscious organs of collective agency'. Populations, by contrast, are mere categories 'within a nation's official statistical account of millions of individuals and households' (Rowse 2012b: 5–6), This is not to belittle the populations idiom, which Rowse sees as 'important and necessary' in both 'Indigenous self-representation and state recognition' (Rowse 2012b: 8). Rowse argues that both idioms have strengths and vulnerabilities, and that both are used by Indigenous intellectuals in policy debates to considerable effect (Rowse 2012b: 7).[7] Rowse does, however, recount a history of the rise of the Indigenous peoples idiom, both in Australia and internationally, from about the late 1950s. He also wonders, in a later essay, whether developments in the Australian Reconciliation Barometer since 2008 might be losing sight of the peoples idiom and reverting solely to a focus on disadvantaged populations (Rowse 2012c). Hence, although Rowse does not address the competing principles framework directly, some of his analysis is consistent with the idea that recent policy debate has moved away from the bottom left of the policy triangle, where ideas of peoples and group autonomy are the guiding principle (see Fig. 5).

However, the peoples idiom has not completely disappeared. The issue of constitutional recognition of Indigenous Australians, which has been slowly building since late 2007, is conducted almost entirely in the peoples idiom (Dodson & Leibler 2012). If successful through bipartisan support (as now seems a possibility), constitutional recognition will move Australia's founding document more to a peoples approach than at any time in the past (Joint Select Committee 2014). One way to understand this possibility is to argue that Indigenous policy debates have not entirely vacated the bottom left quarter of the competing principles triangle, or

alternatively, that a peoples approach can extend across to the bottom right of the triangle. I suggest that elements of both these alternatives are occurring simultaneously, with a peoples approach to constitutional recognition being somewhere near the bottom centre of the triangle (see Fig. 5).

**FIG. 5.** Competing principles in Australian Indigenous affairs: dominant debates in the 2000s
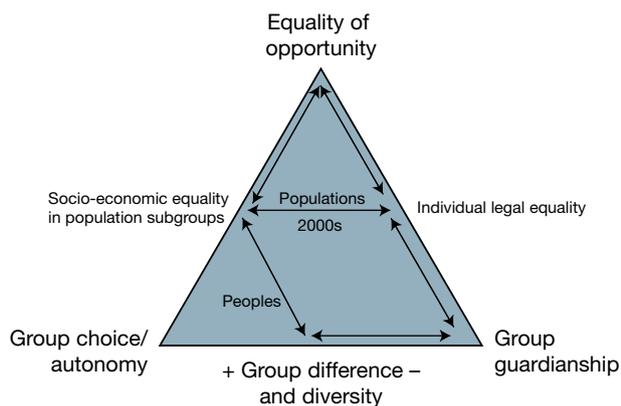


In another recent essay Rowse suggests that Pearson's writings on Indigenous issues are almost always about peoples and seldom about populations. Pearson only very occasionally uses the statistical catalogue of Indigenous disadvantage that is so characteristic of the populations idiom. Rather, Pearson writes histories of peoples at different geographic scales, from the local to the national, involving law, politics and economics. What Rowse finds most fascinating about Pearson's economic histories is the way in which they have 'steadily lost focus on the cultural specificity of Indigenous Australian people-hood, in order to dwell on what Indigenous Australians have in common with other poor people in the developed world' (Rowse 2012a: 158–9). Pearson prioritises economic context, but also insists on talking about peoples rather than the socio-economic disadvantage of Indigenous populations. This is an uncommon and fascinating combination.

One other question arising from the competing principles triangle is whether group guardianship can be applied to peoples. Pearson has argued for the last decade and a half that elements of guardianship are needed in relation to the Indigenous peoples of Cape York. However, he has been sceptical from the start that external government authorities can enforce such guardianship, and has looked to local Indigenous community leaders to take on the role (Pearson 2000: 86-7). In more recent times, Pearson has argued for 'individuals, families and communities' arrogating to themselves 'power that for too long has been assumed by government' (Pearson

2011). These ideas raise the intriguing possibility of group guardianship being built on local community authority more than nation–state authority. Guardianship and its relationship to Indigenous peoples is complex, but it does seem that a peoples approach can be adopted within the bottom right corner of the policy triangle.

I argue that the best experimentalism in Australian Indigenous policy would completely fill the triangle of competing principles. To do so would require thinking both in the populations idiom and in the peoples idiom. It would also mean simultaneously entertaining both positive and negative views of Indigenous difference at different levels of actors, from the individual and household to the organised community agency. This is no easy task but, within this schema, it is the ultimate challenge of doing Indigenous affairs well.

## Where now? Experiments under the Abbott government

The Abbott Coalition government (elected in September 2013) may appear, at an organisational level, to be reversing some of the experiments of the years since ATSIC. A range of Indigenous-specific programs similar to those dispersed from ATSIC a decade ago have now been drawn back together in one Commonwealth organisation. This time, to facilitate Abbott's interest in being a Prime Minister for Indigenous affairs, that single organisation is the Department of the Prime Minister and Cabinet. In the last year, this department has changed from being a small, Canberra-only Commonwealth agency with fewer than 500 employees to a networked national organisation with over 2000 employees in multiple regional locations. The networked department is now implementing a new funding structure, the Indigenous Advancement Strategy, in five broad streams, replacing what has been claimed to be 150 previous Indigenous-specific programs.[8]

While this may seem, organisationally, like a return to experimenting with Indigenous-specific programs and structures as in the 1970s to 1990s, it is philosophically a continuation of the post-millennial experiments in welfare reform, contractualism and normalisation. The Abbott government's threefold slogan of 'getting children to school, adults to work and making (Indigenous) communities safer' is redolent of the Noel Pearson–CYIPL welfare reform agenda. Also, funding within the Indigenous Advancement Strategy is not restricted to organisations incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.[9] Other organisations, such as general non-profit welfare

organisations, for-profit businesses and universities, can also apply and compete for funding with Indigenous organisations, extending the trends of the post-ATSIC years. Alongside making Indigenous-specific programs more like general programs, this open competition for Indigenous Advancement Strategy funding can be seen as a form of normalisation.

One other aspect of the post-millennial and post-ATSIC experiments is an increasing focus on Indigenous people in remote areas and communities. Indigenous people in urban and regional areas have a lower profile and are often assumed to be accessing general government programs and services (even though they can still apply for Indigenous-specific funding). Reflecting this trend, among the five broad streams of funding within the Abbott government's new Indigenous Advancement Strategy is one called 'Remote Australia Strategies'. This seems to cover infrastructure and housing in discrete Indigenous communities in remote areas, which have always been large-budget items within Indigenous-specific funding. However, it is not entirely clear at this stage what funding comes within the five streams of the Indigenous Advancement Strategy and what funding falls outside it. An interesting example of the latter is RJCP, referred to earlier, which began in July 2013, just two months before the Abbott government was elected.

RJCP is a general remote-area employment and community participation program, rather than an Indigenous-specific one. It reflects the trend away from Indigenous-specific programs in recent years, or at least their integration and standardisation with general programs wherever possible. When, in the September 2013 election campaign, the Coalition declared its policy of relocating 'Indigenous programmes' to the Department of the Prime Minister and Cabinet (Coalition 2013), it was not clear that tRJCP would fall within this frame. However, within a week of winning government, machinery of government changes made clear that RJCP would be brought into the Department of the Prime Minster and Cabinet, because of its predominant relevance to remote Indigenous people. A year on, it is still unclear how contracts with RJCP providers will relate to Indigenous Advancement Strategy funding. RJCP contracts started in July 2013 and can run for up to five years, giving providers a funding stream outside the Indigenous Advancement Strategy for another four years. However, 'Jobs, Land and Economy' is one of the five broad streams of funding within the Indigenous Advancement Strategy, which would seem as open to RJCP provider organisations as others.

Although there is uncertainty in the Abbott government's Indigenous affairs experiments, some basic trends are clear. This is not a return to the experiments with Indigenous-specific structures of the 1970s to 1990s, informed by ideas of Indigenous group autonomy and self-determination. Rather, the Abbott government is continuing the experiments of the post-millennial phase, informed by ideas of responsibility, welfare reform and economic opportunity, as well as ideas of competitive contractualism and normalisation within government service arrangements. Even though much Indigenous affairs activity is now occurring within one Commonwealth organisation, and there is talk of constitutional recognition using a peoples approach, this should not lead us to conclude that experimentalism under the Abbott Coalition government is conceptually very different from that of the post-millennial phase more generally.

## Conclusion

There is a profound truth in Rowse's idea, quoted at the outset, that 'every project of government' in Indigenous affairs is an 'exploratory testing' of 'human sameness and cultural difference'. Indigenous affairs experimentalism occurs at a number of levels from the philosophical to the organisational. Experiments with different administrative arrangements for Indigenous affairs emerge and change in tandem with the continual rebalancing of the competing philosophical principles. There are probably no ultimate right answers to these philosophical and organisational issues in the exploratory testing of equality and difference. But analytic and historical awareness may help us refine and improve experiments through time. This paper has attempted to contribute to such analytic and historical awareness.

# Notes

1. Whether there are three or four positions of principle around this triangle is open to debate. Rowse 2002: 5-17 recounts a debate in which Robert Manne argues for the importance of cultural diversity or difference as of value in itself and hence also a principle in Indigenous affairs. Rowse characterises this as a conservative 'communitarian' view and contrasts it with his own 'libertarian' position focused more on 'choice':

   'If the result of Indigenous Australians' choices over the next few generations is that there is a reduction in cultural diversity, then from the point of view outlined in my letter I would not see it as a 'tragedy', but as an acceptable consequence of maximising Indigenous choice' (Rowse 2002: 7).

   Rowse continues, however, by noting 'three difficulties' he might have in 'holding that position' against Manne.

   I acknowledge that valuing cultural diversity or difference is a fourth position of principle in Indigenous affairs, but also maintain that it is the positive and negative valuing of difference in the principles of choice and guardianship that set up the clearest competing dynamics of Indigenous affairs policy debates. Hence I still talk of the ECG triangle, rather than adding the D.

2. Valuing socio-economic equality in population sub-groups involves an 'objective' definition of the interests of households and individuals who currently contribute to inequality in these measures. This objective definition of interests is suggestive of elements of guardianship. However, this view of 'social justice' is, as Rowse (2012b) notes, also very widely embraced by Indigenous people themselves, which somewhat detracts from the idea that this is a guardianship position. Hence the question mark next to guardianship (and choice) at this middle level of Fig. 2. In later figures I simply let individual legal equality and socio-economic equality in population subgroups stand as positions of principle in their own terms, without trying to relate them to the ideas of choice and guardianship.

3. The Commonwealth Social Services Act reached this point of having no references to 'Aboriginal natives' in 1966. The Commonwealth Electoral Act did not reach this point until 1983, as from 1962 enrolment to vote was voluntary for 'Aboriginal natives of Australia' but compulsory for other Australian citizens.

4. The review of ATSIC that provoked Latham's move was conducted by an Aboriginal woman and two non-Indigenous male ex-politicians—one Labor and one Liberal. It had recommended that the 'existing objects of the ATSIC Act should be retained', but that there was 'urgent need for structural change' towards greater 'regional' control within the elected arm of ATSIC (Hannaford, Huggins & Collins 2003: 5–8). ATSIC had many Indigenous critics over the years, as well as supporters.

5. Since the 1990s, Newstart Allowance has been the new name for unemployment benefits. In the Work-for-the-Dole program, participants undertake work activities for their Newstart Allowance.

6. Back in May 2007, Pearson had supported his home town of Hope Vale making an agreement with the Commonwealth for housing investment (Pearson 2007).

7. Rowse's example is Pat Dodson's use of both in his 2012 Ghandi Lecture.

8. See http://www.dpmc.gov.au/indigenous-affairs.

9. This Commonwealth legislation updated and replaced the *Aboriginal Councils and Associations Act 1976.*

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