Family and nation: the Indigenous/non-Indigenous relationship

Tim Rowse

Historian John Hirst has recently suggested that 'the marrying and partnering of people of all sorts across all boundaries is the greatest unifying force in Australia' (Hirst 2006: 313). There has been a steady rise in the proportion of couples that identify themselves as 'Indigenous' in Australia's Census and that include a non-Indigenous partner, from 46 per cent in 1986 to 69 per cent in 2001 (Peterson & Taylor 2003: 111). Are these couples promoting Indigenous-non-Indigenous unification? Mathematics encourages doubt. Because the Indigenous proportion of Australia's population is small (just over 2 per cent) it does not take many non-Indigenous people marrying Indigenous Australians to give rise to this high proportion of 'mixed' couples. Less than 2 per cent of the marrying non-Aborigines at any time are needed to choose Indigenous partners to continue the high proportion of mixed couples recorded in 2001. Most Australians could be racially prejudiced against intermarriage without affecting the rising intermarriage rates that the Census has recorded.

Numbers aside, what a poor analogy for the nation is the home! People who want to coexist within the one nation need not be attracted to the idea of sharing domestic space. A national polity is a far more impersonal social space than a kinship network or a household; it is therefore a more robust vehicle for social cohesion. A tough-minded approach to social cohesion between Indigenous and non-Indigenous Australians must consider the possibility that social distance and cultural difference continue to be valued by both Indigenous and non-Indigenous Australians. Those with a strong sense of difference may favour impersonal, institutional accords between Indigenous and non-Indigenous Australians; they may not care for the intimate mingling envisaged by Hirst. In the first part of this essay I will recall some moments in Australian history when Indigenous Australians made explicit their reservations about close association with non-Indigenous Australians. I will then consider the alternative, impersonal terms in which some Australians, inspired by 'native title', evoke social cohesion.

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While I sympathise with this impersonal, civic vision of social cohesion, I will suggest that as long as it depends on the idea of an Indigenous 'jurisdiction' the idea of an institutional accord between Indigenous and non-Indigenous Australians will continue to encounter problems.

Saying no to assimilation

In the *Natives (Citizenship Rights) Act* of 1944, the Western Australian government empowered magistrates to grant citizenship to selected 'natives' – that is, to exempt from legal restrictions on their citizenship Aborigines who could demonstrate that

for the two years immediately prior the applicant has adopted the manner and habits of civilised life; the full rights of citizenship are desirable for and likely to be conducive to the welfare of the applicant; the applicant is able to speak and understand the English language; the applicant is not suffering from active leprosy, syphilis, granuloma, or yaws; the applicant is of industrious habits and is of good behaviour and reputation; the applicant is reasonably capable of managing his own affairs.

Anthropologist Ruth Fink, in 1957–59, asked 52 rural Aborigines in the Geraldton region (Jamadji people) whether they wished to apply for citizenship. They told Fink that they found these tests of fitness intrusive. For example, was the applicant in a *de jure* or a *de facto* marriage? Did the applicant gamble? Fink saw good reasons for Aborigines to be gamblers.

Gambling now brings prestige and generosity. The fact that people are prepared to lose large sums with their relatives makes them popular within the native group . . . Money is to be circulated and spent. By sharing what one has, one will be given a share at some future time. All these factors outweigh the individualistic drive to acquire goods, though the immediate motives of the players are to win. So long as native workers are insecure in their employment, they know that they may have to depend upon their relatives and friends at some other time when they are out of work. By gambling when they have money, they ensure that they will obtain help on some other occasion. In this sense gambling is a sort of 'investment' which the earning members of the group make in order to ensure help from others when they themselves are short. (Fink 1960: 169–70)

Being sober was another required attribute of citizenship. However, according to Fink, to flout that norm conspicuously could be a matter of honour for some 'natives'. Outrageous drinking (and speaking) behaviour was, in her interpretation, a defiant public performance of equality with whites (*ibid.*: 164–6).

Jamadji people were thus ambivalent about applying for exemption; to submit oneself to the inspection of whites was perhaps a worse humiliation than to remain a 'native' in one's legal status. Fink judged as particularly offensive to Aboriginal feelings the demand that applicants sign a Statutory Declaration that 'I have dissolved tribal and native association except with respect to lineal descendants or native relations of the first degree' (*ibid.*: 47). Jamadjis, in 1958, had a low opinion of the society that they were assumed to be striving to enter (*ibid.*: 189–90, Table 11). To adopt white values and manner of

living would be to accept many irksome restraints that did not apply to 'native' Jamadjis.

Making this negative assessment of white society and its inspectoral processes did not commit Fink's interviewees to a rosy picture of relationships among Jamadjis. They admitted their many fights and petty jealousies; 38 out of 52 Jamadji interviewees agreed with the negative stereotype that 'Jamadjis waste their money', and only 15 denied that 'Jamadjis beat their wives'.

In 1969-70, Lorna Lippmann interviewed Aborigines from rural Victoria and New South Wales who had benefited from assimilation programs. She found people ambivalent about recent improvements in their housing. Through their move from the reserve or riverbank into the town, families now enjoyed a materially better standard of living; however, 'reserve living had fulfilled the need to belong (in a limited community) in a way that life in town did not' (Lippmann 1973: 186). Where government programs had allowed people to acquire homes, education and jobs, stratification had emerged, based on acceptance or rejection of 'the values of the wider society . . . In particular, those who accepted the concept of steady employment as a desirable goal were inclined to look down on those who did not, and to cut them off socially' (ibid.: 188). This downward view was reciprocated by their counterparts' 'envy and scorn' towards those 'getting a better-than-average job' (ibid.: 191).

An emerging pan-Aboriginal identity was helping to ameliorate these divisions among Aborigines, however. According to Lippmann, 'the most strikingly consistent feature of the four Aboriginal communities was their positive evaluation of Aboriginal identity' (ibid.: 193). Relatively meagre items of Aboriginal lore, such as 'phrases of the vernacular or of traditional medical remedies only half believed' took on great significance as markers of a distinct group identity (ibid.: 187). As Australians generally were becoming more interested in Aboriginal art and craft, Aboriginal bearers of these folk-art traditions were emboldened to display them more confidently. As well as identifying these positively unifying ideals, Lippmann noted that a history of racial abjection had also promoted unity. There was a commonly held analysis of the Aborigines' position as 'always on the outside' of a society confidently controlled by whites (ibid.: 192). The behaviour and speech of whites were closely watched for slights and condescension, and 'any act of discrimination towards one member [of the Aboriginal community] was immediately noted and bitterly resented by the whole community' (ibid.: 190).

Lippmann warned her readers not to assume 'that upward social mobility is the motivating force in Aboriginal lives' (ibid.: 194). 'The feeling of interdependence of fate which Aborigines share with each other prevails over the desire for success in the major society' (ibid.: 199). There was strength, not merely defeat, in such solidarities, she insisted. She distinguished the benefits of 'voluntary separatism' from the damage caused by 'imposed segregation' (ibid.: 196).

Voluntary separatism, as I understand it, rests on the assumption that Indigenous Australians possess their own codes of respectability that are distinguishable from what they perceive to be the non-Indigenous system of values. Describing and understanding these alternative codes is the most challenging task in the contemporary analysis of Indigenous affairs, for voluntary separatism is open to contradictory readings: social pathology or cultural autonomy?

straints that did not apply to 'native' society and its inspectoral processes; a cosy picture of relationships among men and petty jealousies; 38 out of 52 men, a stereotype that 'Jamadjis waste their time and beat their wives'.

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was helping to ameliorate these divisions' to Lippmann, 'the most strikingly different communities was their positive evaluation of relatively meagre items of Aboriginal culture, of traditional medical remedies only; markers of a distinct group identity becoming more interested in Aboriginal folk-art traditions were emboldened in identifying these positively unifying elements. Social abjection had also promoted unity. Aborigines' position as 'always on the edge' by whites (ibid.: 192). The behaviour of whites for slights and condescension, and number [of the Aboriginal community] affected by the whole community' (ibid.:

time 'that upward social mobility is the goal' (194). 'The feeling of interdependence here prevails over the desire for success and strength, not merely defeat, in such a way that the benefits of 'voluntary separatism' are gained' (ibid.: 196).

It rests on the assumption that Indigenous 'respectability' that are distinguishable from the indigenous system of values. Describing this is the most challenging task in the process, for voluntary separatism is open to the question of cultural autonomy?

Gill Cowlshaw's ethnographies of 'unrespectable' Aborigines in contemporary western New South Wales vividly express this interpretive dilemma. Confronted with riotous Aborigines in Bourke, she asks: how are we to understand them? The processing of publicly violent Aborigines through the courts and welfare agencies reproduces an understanding of them as 'victims of a social pathology in which they are helpless to combat' (Cowlshaw 2004: 241). The theme of Cowlshaw's interpretive response to the Bourke affrays is her disdain for what she calls 'the suffocating complacent facade of national solicitude' (ibid.: 246). She distances herself from this solicitous hegemony by finding what she calls 'positive meanings' (ibid.: 241) in the riotous behaviour: political agency, 'a tangible, radical, political analysis and response – a refusal of the promises of liberal progress' (ibid.: 243). In their public violence Aboriginal people 'challenge the hegemony, not only of the police, but also of the town's establishment, as well as of Aboriginal legal aid lawyers and liberal academics' (ibid.: 242).

As Cowlshaw acknowledges, public violence (such as riotous behaviour targeting police and shopkeepers in the streets of Bourke) is not the only problem that engages the nation's solicitude; there is also the 'self-destructive violence', 'the crisis levels of distress – domestic violence, homicides and suicides, child neglect and abuse' (ibid.: 245–6). Although Cowlshaw has less to say about such violence, it appears to her that Aborigines involved in domestic violence are 'unwilling to accept the nation's diagnosis' of their predicament. Her next sentence, however, could not be more cautious. 'Rejecting the proffered treatment of their ills *could be seen* as a way in which Indigenous people assert their autonomy from the state's suffocating solicitude' (ibid.: 246, emphasis added). It could be, but is that the best way to see it? Later in this essay I will cite some different, more confident responses by Aboriginal leaders to Aborigines' domestic violence.

Cowlshaw wants us to reconsider what we mean when we refer to 'Aboriginal culture' so that it includes the unrespectable behaviours for which some Aboriginal people in Bourke are arrested, charged and (often) pitied. She is critical of a liberal sentimentality that warms to certain expressions of Aboriginal culture but is embarrassed by Aborigines' 'radical alterity' when it is 'characterized by poverty and marginality without any exotic cultural distinctiveness' (ibid.: 244). 'Public commentators have registered a growing disillusionment with the disappointing results of recognizing native title, Indigenous heritage, and self-determination' (ibid.: 245) because the Aboriginal 'culture' that persists in the context of these public policies includes not only Aboriginal customs that are easy (nowadays) for Australians to value (law, spirituality, art) but also behaviours that are abhorrent to Australians of goodwill. Here Cowlshaw makes explicit her relationship with the widespread public sympathy for Aboriginal culture. Cowlshaw would like to 'endorse the Riot as cultural' (ibid.: 247). She writes that 'riotous fury is the public edge of a deeply embedded sense of ongoing injustice that is built into Aborigines' customary understanding of the social world' (ibid.: 246). However, she concedes that rioting is not the kind of 'custom' that could ever 'have a part in affirming native title or be cited as an element of heritage' (ibid.: 247).

Cowlshaw thus highlights a regulatory effect of the ways that Indigenous cultural difference is understood in public discussions about Indigenous rights. Indigenous Australians are under an obligation to comport themselves in certain ways, to enact their difference in certain terms. As a critic of suffocating, solicitous

liberal goodwill, Cowlshaw gives in to this demand only with the greatest reluctance; she is at pains to emphasise that the terms of Aboriginal honour – which she, as anthropologist, can accept in their awkward entirety – are here being truncated, filtered, and censored. When Aborigines' violence cannot be understood sympathetically as heritage and is instead labelled as pathology, Cowlshaw protests that she as anthropologist is a victim of the moralising logic of national solicitude.

Cowlshaw is perceptive about the political complexities of describing 'Aboriginal culture'. In one respect, however, she is unperceptive about the solicitous and selective hegemony to which she reluctantly yields. It is made up not only of 'police . . . the town's establishment . . . Aboriginal legal aid lawyers and liberal academics' who enact the nation's suffocating solicitude; it includes also Indigenous leaders (some of them academics) who have made a commitment to a notion of Aboriginal 'jurisdiction'. As I will show in the next section, Indigenous advocates of institutional reform persistently evoke Indigenous Australians as managers of a surviving polity within the nation, and the violence of Aborigines' everyday life has become an embarrassment to them.

Representing the Indigenous interest

An example of Indigenous people declaring an Indigenous jurisdiction can be found in recent discussions about how to manage 'Indigenous knowledge'. Addressing librarians and archivists, Martin Nakata and his colleagues ask the Library and Information Services (LIS) Sector to recognise that 'Indigenous knowledge systems have their own systems for management and access' (Nakata et al. 2005: 15). They acknowledge that 'the profession began to respond to Indigenous concerns' (ibid.: 18) in the early 1990s. While they recommend that LIS professionals develop 'protocols to guide practice and to assist professionals to deal with unfamiliar issues' (ibid.: 21), they acknowledge that

in attempting to identify Indigenous knowledge and determine appropriate access conditions, it is not always clear from which Indigenous individual, group or community representatives or organizations that consent should be sought. With some Indigenous groups, and for various reasons, consensus on appropriate access and management of materials can sometimes be difficult to achieve. Indigenous groups are also often a long way from the collecting institution extending the difficulties associated with the working through of issues. (ibid.: 16–17).

In this example, I see four general points that are relevant to our consideration of the institutional relationships between Indigenous and non-Indigenous Australians:

1. the necessary assumption that non-Indigenous people have some discretion about recognising an Indigenous object ('Indigenous knowledge') over which Indigenous people assert control
2. the naming of a non-Indigenous institution (the LIS Sector) that has this discretion

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3. the assumption that recognition leads logically to negotiation with those asserting jurisdiction
4. the acknowledgment that while there is in principle an Indigenous willingness to negotiate, an Indigenous interlocutor might not be easy to identify and transact with.

This fourth issue – Indigenous representation – has come up before. When the Australian parliament first took seriously the idea of negotiating a treaty (or some such instrument) between Australia and its Indigenous peoples, the Senate Standing Committee on Legal and Constitutional Affairs enquired into its feasibility. One conclusion was that Indigenous Australians did not yet have a representative institution that could negotiate on their behalf (Senate Standing Committee on Constitutional and Legal Affairs 1983: 134–47). The question of Indigenous representation is raised by any serious discussion of recognition and negotiation. Indigenous political development is a precondition of equality – seeing 'equality' as primarily a *political* relationship between peoples – and thus of Australia's social cohesion.

The arrival of 'native title' in the early 1990s was a step towards equality, both in principle and in practice. 'The question prompted by *Mabo*', write Brennan and colleagues (2005: 109), is 'whether the broader implications of overthrowing *terra nullius* and recognising Indigenous governance might be explored through a process of comprehensive negotiations'. They point out that the possibility of negotiation has arisen both in principle and in practice. As a matter of principle, the *Mabo* case was about more than property. The High Court's *Mabo* judgment, by recognising Indigenous customary law as the basis of a distinct form of title (native title), confirmed that 'Indigenous groups exercise an internal form of jurisdiction or governance over their members, in terms of defining their rights and entitlements'. Legislation giving effect to native title further 'recognizes that the group has an external form of jurisdiction, namely the ability to enter into binding legal agreements over territory and resources' (ibid.: 108–9). Accordingly, 'Indigenous groups have had to sharpen and develop their capacities for negotiation and internal governance' (ibid.: 109). They give examples of the development of effective regional Indigenous representative organisations. Indigenous political development has become a legal obligation, in the context of native title, because 'the Indigenous Land Use Agreements process and the native title determination process require rigorous demonstration that court applications and agreements between parties in relation to Indigenous land have been duly authorized by the members of the native title holding group' (ibid.: 128).

Langton and colleagues (2004: 1–2) have generalised that negotiated agreements are 'the principal form of engagement between Indigenous nations and the modern nation-state'. 'Negotiation and agreement making encourages the recognition of Aboriginal polities by government and other parties' (ibid.: 16). Native title 'for the first time . . . engaged large groups of Aboriginal and Torres Strait Islander peoples in a process of recognition of their jurisdiction through negotiation and agreement making' (ibid.: 17). They refer to a 'faltering, uneven but undoubted movement towards agreement making within the native title process which has now flowed beyond that increasingly complex and difficult jurisdiction'

(ibid.: 19). Native title has stimulated 'a culture of agreement making, and it is *this culture within and outside the native title process* that begins to engage Aboriginal politics and Aboriginal jurisdiction' (ibid.: 20).

The two problems of social cohesion

What is 'Aboriginal jurisdiction', and how can it be taken into account?

Had Australian history worked out differently, there might have been no possibility of plausibly invoking Indigenous jurisdiction. It is possible to imagine a history that resulted in the disappearance of the Aboriginal 'people' and of the Torres Strait Islander 'people'. Through a combination of poor health, violence, cultural change and intermarriage, these peoples might have failed to reproduce themselves as peoples. On the eve of Federation, this scenario was plausible. When Timothy Coghlan celebrated the first complete enumeration of Aboriginal people in New South Wales in 1891, he remarked that

the aboriginal race is fast disappearing before the march of settlement. Each year sees a diminution of their numbers. Of the 8280 recorded as such at the last Census, 5097 only were of pure blood, and these comprised 2896 males and 2201 females. The half-castes numbered 3183, of which number 1663 were males and 1520 females. (Coghlan 1894: 196)

For several reasons, Coghlan's scenario did not eventuate. In both Aboriginal and official opinion, the notion of 'Aboriginal' broadened to include any degree of descent, as long as that degree is significant to the person concerned. The number of 'full bloods' may well have continued to diminish but that has ceased to be a measure of Indigenous survival (or to be measured at all). In the 2001 Census, 410 003 Australians represented themselves as Aboriginal or as Torres Strait Islander (or as both), without reference to the degree of their descent. Another reason Indigenous Australians did not disappear is that – before and after Coghlan's prediction – the 'march of settlement' included effective (if authoritarian) government and mission interventions into those physical circumstances of Aboriginal life that were causing high death and low birth rates. The downward demographic spiral was halted and reversed, with the date of turning points varying from region to region (see Rowse 2004 for a brief synthesis of this demographic history).

In the last quarter of the 20th century, changes in the ways that Australians understood themselves and their citizenship made it easier to acknowledge Aboriginal or Torres Strait Islander descent. However, to register that descent when filling in the Census form is relatively easy. The Census does not demand proof and does not ask what, if any, other 'Indigenous' behaviours you engage in. The effect of such an inclusive notion of 'Indigenous' is that those recorded officially as the Indigenous people of Australia are not uniformly committed to the customary Indigenous institutions. When the Australian Bureau of Statistics surveyed a large sample of Indigenous Australians in 2002, it found marked regional variations in ways of being 'Indigenous'. Fewer than half (45.7 per cent) of the Indigenous people in cities, towns, agricultural and mining regions of Australia

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(where three out of four Indigenous Australians live) saw themselves as belonging to a clan, tribal or language group. In 'remote' regions, where the other 25 per cent of Indigenous Australians live, three out of four people (76 per cent) identified themselves as part of a clan, tribal or language group in 2002 (ABS 2004c).

We could take these data as showing that 'Aborigines' and 'Torres Strait Islanders' are simply statistical categories, not 'peoples' with a jurisdiction. If that were so, then the question of social cohesion *among* Indigenous Australians would be trivial – of no more interest than the question of social cohesion among all the people born in 1951, or among all those who finished their schooling at the end of Year 12, or all those living in rented premises. However, the public sense of cohesion *among* Indigenous Australians is not trivial; they credibly represent themselves as 'peoples' with a distinct cultural heritage, and from time to time they dispute with one another about who is genuinely entitled to the few specifically Indigenous entitlements in Australian public policy. Larissa Behrendt, an Indigenous academic who argues that there should be more to 'Indigenous rights' than governments have hitherto allowed, has recently spelled out what her advocacy of a treaty implies. The 'distinction between Indigenous people included in the pool of treaty beneficiaries and those who are not will create divisions within our communities and create notions of "real" and "not real" Indigenous people. This may also create different classes of Indigenous people with different rights' (Behrendt 2003: 25). Some who identify as Indigenous will be 'disappointed' by a stricter demarcation of 'Indigenous', Behrendt predicts, if treaty negotiations bear fruit (ibid.: 27). As I understand her, Behrendt accepts that a regime of Indigenous entitlement would require the boundary-defining 'Indigenous Australians' to become more rigorous. Her observation implies some regulatory authority marking the boundaries of the Indigenous jurisdiction.

The underside of Indigenous jurisdiction

Could such a regulatory authority also apply itself to relationships among Indigenous Australians? Since the Royal Commission into Aboriginal Deaths in Custody (1988–91), the idea of a surviving Indigenous jurisdiction has had to contend with the argument that many Indigenous communities are so racked by substance abuse and violence that they cannot be taken seriously as components of an Indigenous jurisdiction (for a statement of this view, see Neill 2002). As the evidence of Indigenous social dysfunction has grown, two parallel lines of argument have developed. One expresses scepticism about the project of self-determination and seeks the return of what one member of the Howard Cabinet, Tony Abbott, has called the 'new paternalism' – 'someone has to be in charge' (Abbott 2006). The other line of argument evokes 'the transgenerational effects of trauma in Indigenous affairs' (Atkinson 2002), highlighting the depth of colonisation's psychological damage. Those who acknowledge the epidemic of psychosocial disorder among Indigenous people do not necessarily draw the conclusion that there is no effective collective 'self' that could practise 'self-determination'. The problem that faces many contemporary Indigenous intellectuals is to refute the 'new paternalism' while acknowledging the depth of the crisis of family and

intra-communal violence within Indigenous families and communities. In the remainder of this chapter I will describe three Indigenous policy responses to the social crisis of Indigenous community.

Noel Pearson has argued since 1997 that his people, particularly *his* people in Cape York, have been 'poisoned' since about 1970 by their access to cash welfare benefits and to welfare programs in kind (Pearson 2000, 2005a). As a result, his people lack 'a strong foundation of social values and norms' (Pearson 2005a: 8). To repair the social fabric, Pearson seeks 'the real economy'. 'Maximum participation in economic life is key to overcoming disadvantage' (2005a: 1). Income is important, but its social benefit is determined by the way that one gets it. Pearson postulates 'the real economy' as the appropriate source for people's income. The recurring term 'real economy' is not well defined, but its primary reference is to the moral conditions of exchange: people should be active, not passive, in their receipt of income; they should reciprocate income with socially constructive behaviour. Pearson has made it clear that he is not seeking simply to get Cape York people 'off welfare' and into the labour market. Because Cape York does not attract sufficient job-creating investment, alternatives to welfare – 'to engage successfully with the real market economy' (2000: 89) – are few. The decline of rural industries, the absence or scarcity of resources, 'the sheer difficulties involved in getting enterprises established and running profitably' (2000: 90), and deficits in skills, health, education and infrastructure combine to make it impossible to conceive an end, in the short term, to some kinds of social welfare expenditure to Cape York Aborigines. However, insisting that 'we have . . . a right to an economy' (2000: 94, emphasis original), Pearson argues that communities should be given the option of a 'a new deal on welfare, where welfare represents support for people to participate socially and economically in Australia, in their own country' (2005a: 11). Communities should be able to negotiate different rules regulating their receipt of welfare, 'given the state of our current dysfunction and the current misalignment of incentives' (2005a: 13).

What, in Pearson's view, should people be given incentives to do? He promotes the mobility of young people: they should be encouraged to leave their home region – for part of their lifetime – for education and for employment. When skills and attitudes thus acquired are returned to their region, economic development is more likely. He would also like communities to be able to make households accountable for their treatment of their children. 'Communities want the capacity to redirect welfare payments from recipients who are not using them for the benefit of their family or their children' (2005a: 19). He would prefer to 'be a bit paternalistic in the early stages of an emerging problem within families rather than not do anything because we don't want to be paternalistic'. Such early intervention may avert the greater paternalism of removing children from their families (2005b: 19). Pearson would also like to find a way to hold residents accountable for their (mis)use of publicly provided houses (2005a: 22).

Pearson's case for welfare reform is hostile to the generalisation of Australian notions of welfare entitlement to all Indigenous citizens. His political task has been not only to 'muster up a growing consensus of community leaders around

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says – to persuade 'bureaucrats and a whole lot of people in the white community'
that these Aboriginal leaders should be empowered to include welfare payments
among the carrots and sticks that they can apply to his people's moral reformation;
the laws that establish Australians' welfare entitlement may have to be amended
(2005a: 19–20). Pearson's practical contribution to the contemporary discussion
of Indigenous jurisdiction has been to promote the regional autonomy of Cape
York's welfare state.

Pearson has illustrated the weakness of 'social values and norms' by pointing
to males' drinking culture.

Outside of this drinking circle are the women and the children and old people and
the non-drinkers. The resources of these non-drinkers are used to feed the families –
including those who have spent most or all of their money on grog, when they are
hungry. But more than that, these non-drinkers are placed under tremendous social
and cultural pressure to contribute resources to the drinking circle for buying grog.
So the drinking circle becomes the suction hole for the family's resources. Wives and
girlfriends, parents and grandparents, are placed under tremendous pressure – social
and cultural and ultimately through physical violence: 'Why you wanna stop me from
having fun with my brothers?' – to contribute to these pathological behaviours. (2000:
17)

In this example Pearson has touched on a matter of recurring sensitivity in
contemporary Indigenous reflections on social cohesion: the crisis in the rela-
tionships of male to female, young to old.

In 1999, 15-year-old Susan Ann Taylor died in a Lockridge (WA) Aboriginal
camp in circumstances that attracted the coroner's attention. The coroner ques-
tioned the adequacy of state services to Aboriginal communities suffering family
violence and child abuse. The state government commissioned a review chaired
by Aboriginal magistrate Sue Gordon. Gordon confirmed that in Aboriginal com-
munities there was an 'epidemic' of family violence and child abuse. 'Persistent
assaults on Aboriginal culture, kinship systems and law' had left Aboriginal com-
munities 'extremely vulnerable to family violence and child abuse' (Gordon 2002:
xxiii). Arguing that government under-servicing exacerbated this vulnerable con-
dition, the Gordon inquiry made many detailed proposals for state agencies to
improve their defence of Aboriginal families from this 'epidemic'. For example,
she urged the government to provide more housing, including more crisis accom-
modation.

Because the government of violence requires one to distinguish between legit-
imate and illegitimate violence, the Gordon inquiry's findings about Aboriginal-
police relations were particularly interesting. Gordon found that Aboriginal peo-
ple were inhibited from seeking police help by their distrust of the Western Aus-
tralian Police Service (*ibid.*: 207) and that the police relationship with juveniles
was particularly sensitive (*ibid.*: 213). Yet she also observed that in remote com-
munities people felt safer if there was a police presence (*ibid.*: 213) and that some
Aboriginal people wanted more police. This tension within the Gordon inquiry's
presentation of the police conveys a significant uncertainty in the contempo-
rary Indigenous sense of jurisdiction: what is the appropriate source of coercive

power in critical situations? The recognition of family violence (including the abuse and neglect of children) as a national policy issue since the early 1990s has highlighted the difficulty – for Indigenous (and other) policy intellectuals – of affirming the existence of the ‘Aboriginal jurisdiction’.

History – an influential discipline in Australian discussions about responsibility and desert in Indigenous affairs – contributes little to our wisdom about what to do next in the articulation of the national with the Indigenous jurisdiction. Aetiologies of the current crisis within the Indigenous jurisdiction are easily produced by anyone with a basic understanding of Australia’s colonial past. The Gordon inquiry came up with the following list of the factors giving rise to family violence and child abuse:

Marginalisation and dispossession; loss of land and traditional culture; breakdown of kinship systems and Aboriginal law; entrenched poverty; racism; drug, alcohol and substance abuse; the effects of institutionalization and removal policies; the ‘redundancy’ of the traditional Aboriginal male role and status, compensated for by an aggressive assertion of male rights over women [and] children; trauma and violence over the last two centuries; issues of governance and leadership in communities; passive welfare; the portrayal of violence and sexuality; gambling. (Gordon 2002: 478–9)

One is tempted to deride this list for its politically conciliatory inclusiveness and to lament its lack of any prescriptive implication. All these things are bad and irreversible: to contemplate the list is to feel, almost unbearably, history’s determining weight.

However, I question the list’s insistence on the bad factors. Let us change the question slightly, from what causes Indigenous people to be violent to people they are close to, to what has caused family violence to be the problem that we now consider it to be. We would still list all the above factors, but we would add one: the improved reporting of family violence. Family violence, as a problem, is constituted not only by the fact that it happens but also by the fact that we notice it happening and find it problematic. The best feature of family violence – if I can risk writing so perversely – is the proliferation of talk about it. What has triggered such talk? One intriguing possible answer is: challenges to Indigenous identity.

From 2001 to 2006, the Aboriginal and Torres Strait Islander Social Justice Commissioners William Jonas and Tom Calma researched and consulted on Indigenous communities’ family violence – ‘a scourge . . . causing untold damage and trauma among Indigenous communities’ (HREOC 2006: 4). They have concluded that, to take seriously the human rights of Indigenous Australians, Indigenous women must be encouraged to violate ‘the code of silence that exists in many Indigenous communities about these issues’ (ibid.: 4). In explaining why women might find it hard to do that, Calma distinguishes between Aboriginal customary law which, in his view, ‘does not condone family violence and abuse’ (ibid.: 10) and contemporary Aboriginal identity:

The identity of many Indigenous women is bound to their experience as Indigenous people. Rather than sharing a common experience of sexism binding them with non-Indigenous women, this may bind them more to their community, including the men

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stralian discussions about responsibility contributes little to our wisdom about dealing with the Indigenous jurisdiction. The Indigenous jurisdiction are easily dismissed as a relic of Australia's colonial past. The list of the factors giving rise to family

and traditional culture; breakdown of poverty; racism; drug, alcohol and substance and removal policies; the 'redundancy' status, compensated for by an aggressive parent; trauma and violence over the last 50 years; relationship in communities; passive welfare; etc. (Gordon 2002: 478–9)

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and to their experience as Indigenous people of sexism binding them with non-Indigenous people in their community, including the men

of the community . . . [A] consequence of this is that an Indigenous woman may be unable or unwilling to fragment their identity by leaving the community, kin, family or partners. (ibid.: 6)

Calma insists that if 'customary law' is to be recognised by governments it must conform to human rights norms that uphold gender equality (ibid.: 10). Customary law must be renewed in these terms despite the historically formed Indigenous identities that bind men and women to unequal relationships. Quoting the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Calma espouses this human rights mandate to use 'all appropriate measures' to 'modify the social and cultural patterns of conduct of men and women' to change cultures of sexual inequality (ibid.: 11).

Conclusion

From the point of view of Indigenous Australians (as I interpret it) the problem of social cohesion has two dimensions: how to live in a nation-state in which the immigrant non-Indigenous peoples have long enjoyed the advantages of majority, wealth, and power, and how to live with each other. As the figures on intermarriage from my opening paragraph indicate, the ways that Indigenous Australians now resolve their difficulties in living with one another include choosing non-Indigenous spouses. As a result, one of the sources of growth in the Indigenous population is births to non-Indigenous women who are married to Indigenous men (Gray 2002; Kinfu & Taylor 2002). However, while intermarriage may be an important strategy of Indigenous reproduction, from the point of view of the nation as a whole it is a trivial achievement. For Australians as a nation to come to terms with the Indigenous minority requires contracts of an impersonal and institutional kind.

In the discussion of Indigenous affairs since the bipartisan acceptance of land rights in the 1970s, it has been tempting to dwell on the consistency between four processes of 'recognition' (Rowse 2006) that characterised Australian public policy in the last quarter of the 20th century:

- the recognition of the Indigenous population by self-identification (by changes in Australia's Census practices)
- the recognition of a surviving tradition of customary law (in land rights and native title legislation and in the discretion of sentencing judges in criminal trials)
- the recognition of an Indigenous land estate (in the policies enabling land claim and land acquisition that have transferred about one-fifth of Australia's land mass into Indigenous title)
- the recognition of corporate capacities of self-government (in the public funding of the Indigenous sector). (Rowse 2005)

One word that evokes the consistency between these four processes of recognition is 'jurisdiction'. In the contemporary political discourse of some Indigenous intellectuals, 'jurisdiction' evokes the nation's Indigenous interlocutor.

However, we should resist the supposition that territories make good analogies for jurisdictions. It has been relatively easy, since the advent of land rights policies, to demarcate a distinct Indigenous *territorial* order. One needs only to revise the laws of land tenure. While these revisions have been controversial, they have not been technically difficult for lawyers and surveyors, once the political process had forged an understanding of the rights of parties. However, the demarcation of jurisdictions within a nation-state is not straightforward. The Indigenous and non-Indigenous populations are not discrete (though one can enumerate them as if they were). The Indigenous sector, as Noel Pearson has found, is subject to the universalising logic of citizenship entitlement. And, according to Tom Calma, the adaptation of Indigenous customary law to contemporary needs is open to contestation between a sexist Indigenous particularism and the demands of human rights universalism. One could say of recent Australian debates that they have approached the problem of social cohesion as if it were a choice between the promotion and the dissolution of Indigenous jurisdiction. In this essay I have highlighted some work by contemporary Indigenous intellectuals that seeks to transform both the Australian and the Indigenous jurisdictions in order to forge a better relationship between them.

Social Cohesion in Australia

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with Emma Dawson

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