Federalism in the Northern Territory: Statehood and Aboriginal Political Development

R Gibbins

Election 1987

VOTING

Northern Land Council

Land Councils press Federal Government to stand firm

STATEHOOD?

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Federalism in the Northern Territory:
Statehood and Aboriginal Political Development

Roger Gibbins

Australian National University
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PREFACE

The roots of this study are to be found in a longstanding interest I have had in two topics: the problems of political representation confronting small regions within large federal states, and the political evolution of Aboriginal communities in North America. In both cases, the central concern has been with the institutional arrangements through which numerically small communities can exercise some effective leverage on the governments and public policies of the larger, encompassing political order.

In 1987 a sabbatical leave from the University of Calgary, a Leave Fellowship from the Social Sciences and Humanities Research Council of Canada, and generous financial assistance from the Research School of Pacific Studies at the Australian National University enabled me to extend my research to Australia's Northern Territory. The seven months that I was thus able to spend in Australia were a delight. Certainly my own experience was broadened; I can only hope that my host also benefited in some small way.

There are a great number of people whom I would like to thank, indeed more than I can possibly manage in this space. ANU's Department of Political and Social Change provided a most pleasant research environment during the three months I spent in Canberra, and Jon Altman's generous assistance was invaluable to my work. In Darwin, the North Australia Research Unit provided an ideal work environment and social base. Indeed, I cannot recall a three-month period in my life when I have learned so much, enjoyed myself so much, and at the same time produced so much. The hospitality that NARU extended to both my family and me will always be remembered. Finally, I would like to thank NARU's Research Director, Peter Loveday, who was more responsible than anyone else for making the Australia trip possible, for shaping my understanding of the Northern Territory and its Aboriginal communities, and for ironing out many although I am sure by no means all of the wrinkles in my analysis of Australian political life.
INTRODUCTION

Simply put, this study addresses the evolution of statehood and Aboriginal self-government within the Northern Territory of Australia. More specifically, it addresses the likely impact of statehood on Aboriginal interests and aspirations within the Northern Territory.

While the evolution towards statehood and the evolution of Aboriginal self-government have not, and will not, move along identical paths, the two can be placed within the same analytical package. The discussion of statehood enables us to trace out some of the analytical similarities and differences between the political aspirations of Territorians, more generally defined, and those of Aborigines within the NT, more narrowly defined. As will be seen, political conflict between the Aboriginal and non-Aboriginal populations of the NT stems as much from shared aspirations as it does from incompatible beliefs, values or interests. For a variety of reasons, however, some of the political options open for the Territory as a whole may not be open to Aborigines within or without the NT.

* * * * * * * * *

The residents of the NT find themselves in an anomalous position within the Australian federal state, a position shared only with residents of the Australian Capital Territory (ACT) (In other important respects the residents of the ACT live in a world apart, a world not embraced by the present analysis.) Unlike Australians elsewhere they do not fall under the political jurisdiction of a state government, nor do they enjoy 'equal' representation in the Australian Senate. While it is true that the government of the NT now resembles that of state governments in most respects, the political situation of Territorians nonetheless differs from that of other Australians in several important ways. It is not surprising, then, that this anomaly serves as an ongoing irritation, an itch on the body politic which will be scratched. There is persistent and inevitable political pressure to remove this anomaly, to move towards a situation in which Territorians 'enjoy' the same political representation and circumstances as other Australians. In a very broad sense, this is what was entailed in the historical movement towards responsible
government, and is entailed in the more contemporary movement towards statehood for the NT.

From a more national perspective, the political evolution of the NT can be seen as the slow extension of federal principles and federal institutions to the Territory. The logical endpoint of this evolution is a situation in which Territorians and their government are fully integrated within the political institutions of the Australian federal state.

All this is not to say that statehood is inevitable, or that in the event of statehood the NT will be fully equal to other states within the federation. Nor is it to argue that Territorians will necessarily be well-served by statehood; this is an argument most appropriately left to others. It is also an open question whether existing federal institutions will be sufficiently elastic to accommodate statehood for the NT. Nevertheless, the analogy of an itch on the body politic remains. The itch is neither life-threatening nor demanding of immediate attention. It will, however, continue to generate political conflict as Territorians scratch, protesting with varying degrees of intensity the fact that they and their government do not as yet stand on equal footing with the residents and governments of the six Australian states.

The statehood issue, however, is only one way in which the NT stands apart from the Australian mainstream. A second and, for the analysis that follows, even more critical way is the fact that approximately 22 per cent of the Territorian population is of Aboriginal descent. In no state do Aborigines come even close to having the demographic weight, and thus potentially the political weight, that they enjoy in the NT; even in Western Australia and Queensland the Aboriginal share of the 1986 state population is only 2.7 per cent and 2.4 per cent respectively. The NT is such an important arena for Aboriginal affairs not because it contains the majority of the Australian Aboriginal population (only 18 per cent of Australian Aborigines live in the NT) but because it is the only political unit of any size in Australia where Aborigines constitute more than a negligible political force. Certainly the demographic weight of Aboriginal people and the extent of Aboriginal land in the NT (47 per cent owned or under claim by Aborigines) open up political options that would be much more difficult if not impossible to achieve elsewhere in the country.

Just as Territorians as a whole have been pushing for greater control over their own lives, first through the
quest for responsible government and more recently through the quest for statehood, so too have Aborigines been seeking greater control over their own lives. Just as Territorians have been trying to reduce the impact of external control over their lives, to erect the political barriers of statehood between themselves and the national government in Canberra, so too have Aborigines been seeking to erect political barriers between themselves and the broader community, not to isolate themselves but to maximize control over their own lives and lands. And just as the NT government has been trying to achieve greater control over economic development within the Territory, so too have Aborigines been trying to achieve greater control over economic development on Aboriginal land.

In both cases, Aborigines and Territorians more broadly defined have been faced with the dilemma of small numbers in a democratic political system where, ultimately, numbers do count. While Aborigines constituted 22.4 per cent of the Territory's population in the 1986 census, Aborigines (including Torres Strait Islanders) constituted only 1.5 per cent of the national population in a political system where the Commonwealth government remains the dominant actor in Aboriginal affairs. The Territory as a whole contains only 1.0 per cent of the Australian population, and thus experiences today as it experienced in the past considerable difficulty in exercising electoral leverage on the Commonwealth government. As Loveday (1975, 5) has observed:

... for much of the history of Australia, the Territory has had little opportunity to have any politics. From its inauguration as a constitutional entity in 1863 until the mid-1960s the Territory, for most of the time, was under outside control and Territorians had few opportunities for electoral politics.

The convergent paths of Territorian and Aboriginal political evolution, and the shared dilemma of small numbers, raise a number of interrelated questions which this study seeks to address:

- under what conditions does statehood pose a threat to Aboriginal interests within the NT? Under what conditions might it be seen as an opportunity for Aboriginal peoples?

- do federal principles and institutions provide a useful model for Aboriginal communities within the NT?
- what might be done to ensure the full and effective participation of Aborigines within the political institutions of a new Northern Territory state? More broadly put, how might the political integration of NT Aborigines and Aboriginal communities into local, state and national politics be achieved?

Throughout this study the analytical focus will be on the NT. The issues under discussion, however, have much broader application. There is little question that the political fate of NT Aboriginal communities will have important demonstration effects elsewhere in Australia. While success in the NT would by no means ensure success elsewhere, failure in the NT could not help but have a harmful effect on experiments with Aboriginal self-government, or on the political will to experiment with Aboriginal self-government, in the existing Australian states. It should also be noted that there is increased international communication among Aboriginal organisations, and a growing comparative academic literature on Aboriginal politics, both of which will inject the Australian experience into the political arenas of other countries. Finally, it should be noted that the statehood issue is of more than idiosyncratic interest to those people most directly affected. It provides an important test of the flexibility of federalism in accommodating territorial communities with relatively minute populations. While federalism is traditionally seen as an institutional vehicle for protecting minority interests, for limiting the impact of national governments on sub-national communities, federal principles and institutions are not infinitely elastic. An examination of federalism within the NT, both in the case of statehood and Aboriginal self-government, enables us to explore the elasticity of federal systems of government.

Here it is useful to keep in mind that federal states rarely experience formal constitutional or institutional change, and it is this rarity of change that makes the political evolution of the NT particularly interesting. Of course, if existing federal arrangements were simply to be replicated for the NT, if only the timing but not the content of federal institutions was at stake, that interest would be diminished. However, this is unlikely because of the critically important role played by Aboriginal issues, peoples and land in the NT. The NT thus presents a particularly interesting setting in which to explore the impact and accommodative capacity of federal institutions, an opportunity to explore the adaptability of a federal constitution put in place at the beginning of the century to the radically changed environment in the Territorian and Aboriginal communities.

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STRUCTURE OF THE STUDY

Chapter One presents a very brief introduction to federal forms of government and, in so doing, sets in place an analytical framework used for the examination of both statehood and Aboriginal self-government. Chapter Two examines the pattern of political conflict between Aborigines and non-Aborigines in the NT, while Chapter Three explores the likely impact of statehood on Aboriginal Affairs. Chapter Four examines the likely impact of Aboriginal electoral participation on state politics within the NT. Chapter Five explores local government in Aboriginal communities while Chapter Six examines the role played by land councils in both the statehood debate and more general Aboriginal political aspirations.

Throughout, the underlying theme is that of political integration. The political integration of either Aboriginal or territorial communities into contemporary federal states is not a topic that has received a great deal of attention. While there is a massive literature on the social and cultural integration and/or assimilation of Aboriginal communities and individuals, attention to questions of political integration is a more recent phenomenon. Insufficient attention has been paid to the political integration of self-governing Aboriginal communities into the complex political matrix of contemporary federal states. If anything, small territorial communities such as the NT have received even less attention, with the existing literature only beginning to come to grips with the problems of political integration posed by the movement of territorial communities towards fully-evolved self-government.

Before embarking upon this analysis, there are a number of important caveats that should be mentioned. First, the analysis that follows does not set out to grind any particular normative or ideological axe. While it is assumed that greater self-determination is a goal shared by Aborigines and non-Aborigines alike in the NT, this is an assumption that finds ready empirical support. My focus is not on the desirability of greater self-determination but rather on the institutional forms through which self-determination might be achieved. Second, the analysis is that of a political scientist and not that of a trained anthropologist. Thus the study is written at a somewhat higher level of abstraction, and with less attention being paid to the nuances of community differences, than is normally the case in anthropological research. Third, the difficulties of the analytical task should be stressed. As Heatley (1979, 133) has observed, 'of all the aspects that
must be involved in a study of the Northern Territory society and politics, the place of the Aborigine, both historically and contemporarily, is undoubtedly the most difficult to approach. If this study can make a modest contribution to the work that has gone before, I will be more than satisfied.
CHAPTER ONE
FEDERALISM AND THE PROTECTION OF MINORITIES

Introduction

From the initial campaign for responsible self-government following the Second World War, the residents of the NT have sought a greater degree of political control over their own land and futures. In this sense, the contemporary quest for statehood is but the most recent episode in a longer historical quest for 'self-determination', albeit self-determination within the institutional structures of the Australian federal state. The notion of self-determination has also played a central role in Aboriginal policy since the national election of the Whitlam ALP government in 1972, although in this case the transmogrification of the term into 'self-sufficiency', 'self-reliance' and 'self-management' (see Sanders 1982) introduces an element of both conceptual confusion and ideological debate.

The notion of self-determination would seem to imply that the people concerned, be they Territorians broadly defined or Aboriginal communities within the NT more narrowly defined, would be able to exercise greater control over their lives and their futures. In the former case, self-determination boils down to the vigorous contemporary debate over the merits and fiscal feasibility of statehood. In other words, the institutional vehicle through which greater self-determination might be achieved - a constitutional status identical to that of the existing states - is clearly defined; what remains to be debated are the economic and political benefits of statehood. The essential political debate, then, is over the applicability of the existing statehood model to the Northern Territory.

In the case of Aboriginal communities, however, there is no consensus on the institutional vehicle (or vehicles) through which greater self-determination might be achieved. To my mind, there are three central questions to be asked. First, can a sufficient degree of self-determination be achieved through the full extension of existing political institutions - the franchise, local government, political parties - to the Aboriginal communities, or will self-determination (or even self-management) require the creation of new political institutions for Aboriginal communities? Second, if new institutions are required, what form should they take and how might they be incorporated into the broader institutional structures of the Australian federal state? Third, can an institutional framework be created in the NT which will allow both Territorian and Aboriginal
self-determination? The admittedly brief discussion of federalism presented below provides a framework through which such questions can be addressed, even if not definitively answered.

Minority Protection in Federal States

In essence, federalism provides an institutional constraint on majority rule, ensuring that in at least some circumstances and in some policy areas, the national majority does not prevail over territorially-bounded minorities. As Wilenski (1983, 84) has written:

Federal institutions make difficult those changes desired by a majority of electors but resisted by minorities in the smaller constituent states. That is the price paid by the majority to the smaller constituents for their entry into federation.

It is for this reason that federalism is of particular interest to the NT, whose population forms such a miniscule proportion (1.0 per cent) of the national population. Federal forms of government may also be particularly germane to Aborigines who form a sizeable minority (22.4 per cent), but still a minority, in the NT and a miniscule minority (1.5 per cent) within the country at large.

But how is such protection of minority interests achieved? In federal states, the powers of government - all of those things, current and potential, that governments can do for and to the citizens who elect them - are divided between two levels of government. In the Australian case, some powers or 'functions' are assigned by the constitution to the Commonwealth while others are left to the states, while yet still others are concurrent with the Commonwealth prevailing, if it chooses to exercise its power and the High Court upholds it in case of challenge. In theory each level of government is sovereign within its own legislative domain although, as will be discussed shortly, the reality is somewhat different. As long as state governments are exercising powers exclusively assigned to them by the federal division of powers, state decisions cannot be overturned by the Commonwealth. The Commonwealth Parliament cannot legislate in areas of jurisdiction which have been left by the constitution to the states, nor can the states legislate in areas of jurisdiction reserved for the Commonwealth.

The division of powers in federal states may protect national minorities by transforming them into state majorities. Imagine, for example, that Australians of Greek descent were a national minority but formed a majority in
the hypothetical state of Southland. The federal division of powers would provide the Greek majority in Southland with a state government which they would control because they would form a majority within the state. Normal democratic conventions of majority rule would protect at least those members of the national Greek minority who were part of the Greek majority in Southland. This form of protection can be a potent one because it gives the minority their own government which can be used to erect and defend group boundaries vis-a-vis the larger society. Depending of course on their legislative scope and fiscal resources, governments can be very powerful instrumentalities for boundary maintenance, and for shaping the cultural and social environments.

However, not all minorities are protected by the federal division of powers. First, minorities are protected only if they can be assembled into some form of territorial community within which they form a majority. While federal forms of government for non-territorial communities are conceivable (Reeves, 1986), their implementation would be tortuously difficult. Second, only those minority group members living within such territorial communities are directly protected by the federal division of powers. In the above example, only those Greeks living in Southland would be directly protected. Greeks living in other states would remain both a national minority and a minority within their state, although the Greek-dominated government of Southland may form a powerful ally if the interests of the former are under attack. Third, minorities are protected only if the constitution assigns those powers of particular importance for the minority to the state governments. If, in our hypothetical example, Greeks were particularly interested in education policy and the constitution assigned education to the Commonwealth Parliament, then Greeks would still be outnumbered in the legislative arena that counts. It is this issue that forms the nub of the statehood debate in the NT; would a state government for the NT in fact have the legislative scope (and the fiscal resources) that Territorians might expect, or would its legislative domain be circumscribed to exclude matters of direct Territorian concern such as Aboriginal land rights, national parks and uranium mining?

The continued need for minority protection within the national arena brings into focus a number of quite distinct forms of minority protection. First, and only in federal systems of government, a minority may be protected by the division of powers provided that it forms a majority within a state, and provided that the constitution assigns those matters of minority concern to the jurisdiction of the states. Second, and again only in federal states, a minority may be protected in the inter-governmental arena by
a subnational or state government speaking on its behalf. Third, a minority may be afforded protection through direct forms of representation within national political institutions; an Aboriginal example is provided by the special Maori seats in the New Zealand Parliament. Here we might also include minority rights provisions in constitutionally-entrenched Bills of Rights along with such things as legislative civil rights codes and the legislative protection of Aboriginal land rights. Fourth, minorities may be protected in national institutions through the exercise of conventional political resources—interest groups, voting behavior, alignments with particular political parties, or strategic coalitions with other minorities in the political system.

To move from the hypothetical position of Australian Greeks to some real life examples, the French Canadian minority in Canada is protected because, within the province of Quebec, French Canadians form a majority, and the powers assigned by the constitution to the provincial governments are ones directly related to the cultural interests French Canadians want to preserve. Within the national legislative arena French Canadians have relied upon the electoral strength that comes from both regional concentration and the fact that they comprise nearly 30 per cent of the electorate, and, at least historically, upon a very successful electoral alignment with the Liberal party.

American Blacks, on the other hand, are not protected by the federal division of powers in the United States because Blacks form not only a national minority but also a minority in each of the 50 states. Indeed, it has been argued that federalism has systematically worked to the detriment of the Black population. By default, Blacks have relied on their voting strength in congressional and presidential elections, on lobby organizations such as the National Association for the Advancement of Colored People (NAACP), on constitutional protection through the Bill of Rights, and on an electoral alliance with the Democratic party.

The American example is of direct relevance for the present discussion given the fact that Australian Aboriginal population also forms a minority, and usually a very small minority, within each of the Australian states and territories. Thus federalism per se has not provided institutional protection for Aboriginal interests in Australia. Indeed, it can be argued that federalism has enhanced the power of those elements in the community most opposed to Aboriginal interests, that federalism has further constrained the already half-hearted protection that the Commonwealth government has provided for Aboriginal interests, and that the full extension of federal principles
to the Northern Territory would imperil rather than protect Aboriginal interests. This argument is pursued in greater detail in the next chapter.

In drawing this discussion of minority protection in federal states to a close, it should be stressed that the constitutional division of powers is far from watertight in modern federal states. Of particular importance here is the growing fiscal imbalance between the federal and state governments. As Scott (1983, 3) explains, 'the Commonwealth's fiscal resources have exceeded its constitutional powers and obligations, and the powers and obligations of the states have constantly exceeded their fiscal resources.' Currently, the Commonwealth raises approximately 80 per cent of all government revenue in Australia, while state governments raise 16 per cent and local governments 4 per cent (Advisory Council for Inter-Government Relations Report, 1984).

This fiscal imbalance is of direct relevance to any discussion of federal institutions in the Northern Territory. While the existing state governments in Australia have become heavily dependent upon Commonwealth funding, and thus exposed to policy influence albeit not legislative control from the Commonwealth government, the dependency of the NT has been even greater given its more limited revenue base and the high costs associated with delivering services to a small, remote and geographically dispersed population. The question then arises whether statehood would be accompanied by a sufficient degree of fiscal autonomy, or whether the trappings of statehood would conceal a chronic and at times acute financial dependency.

Supporting Arguments

While the primary rationale for federal systems of government is the protection such systems provide for minority interests, other supporting arguments exist which are of some relevance to the political evolution of the NT. As Holmes and Sharman (1977, 29) suggest, 'a federal structure may well help in the process of making governments more responsive to the wishes of its citizens by keeping both units of government more manageable and by providing a framework for alternative strategies for group and individual political action.' Federal systems decentralize political decision-making and, in the process, increase the sensitivity of government to local and regional concerns. (Whether this 'increased sensitivity' would work to the advantage or disadvantage of Aboriginal communities is an issue explored in the next chapter.) Federal systems may also increase administrative efficiency in regions remote from the national capital, a consideration of some importance to traditional Territory complaints, justified or
not, which have been levelled against Canberra public servants.

By moving government closer to the people, federal systems may also move people closer to the government; public opinion surveys in Canada have found a consistent pattern of citizens identifying more closely with their provincial governments than with their national government. The subnational communities encapsulated by state and provincial governments appear to provide a satisfying point of identification for citizens living within increasingly large and complex nation states. For those concerned with the growing power of the modern state and the threat such power may pose to individual freedom, federalism offers some solace by dividing and fragmenting the power of the nation state, and by reducing the hegemony of any one national political party, although it does so at the risk of entrenching one-party regimes at the state level. Finally, federal systems facilitate greater flexibility and experimentation in public policy, enabling governments to learn from the experiences, successes and failures of one another.

**Federalism and Territorial Minorities**

The primary minorities protected by federalism are territorial or regional communities - the states in Australia and the United States, the provinces in Canada - although embedded within those communities may be significant ethnic, cultural or linguistic minorities such as the francophone population of Quebec. Thus state populations, such as the residents of New South Wales or Tasmania, are of course protected just as Territorians would be protected by the extension of federalism to the NT. This protection, however, would only apply to the extent that their state government had legislative control over those powers of government dealing with matters of direct interest to Territory residents. If such powers continue to reside with the Commonwealth, federalism per se may be irrelevant.

Federalism is a means to preserve regional variation, to ward off homogenisation. As Holmes and Sharman (1977, 135) note, a federal constitution 'is best described as a device whereby the federal qualities of a society, whether social or structural, can be articulated and guaranteed their political existence, with provision to modify the formal division of powers originally agreed upon as the need arises.' Intuitively, federalism seems most appropriate where the states or provinces clearly have distinctive interests - cultural, economic or social - which are potentially at odds with the larger national community. Canadian examples here include the linguistic interests of Quebec francophones in a predominantly anglophone national
community, and the economic interests of Albertans living in a province which contains over 80 per cent of conventional Canadian oil reserves. Here it should also be noted, of course, that it may be a matter of intense political debate whether any particular federal quality or distinctive interests should be protected. If, for example, a specific state has a particularly repressive outlook towards racial minorities, should this 'distinctive interest' or 'federal quality' warrant constitutional protection?

Where regional variation is less pronounced, where the economic, social and cultural interests of people vary little from state to state, the value of federalism becomes less apparent. Thus we find in Australia an ongoing debate as to whether federalism is still required in a society marked by its relatively homogeneous character, a society in which regional variations across the states, while by no means absent, are not pronounced (Epstein 1980; Harris 1979; McMinn 1979; Wildavsky 1961). (For a dissenting argument, see Holmes and Sharman 1977.) As Emy (1978, 77) has noted:

Federalism is a way of reconciling unity with diversity and preserving separate political identities. But how real are these identities in Australia? Are the states necessary? The efforts of the federalists to retain the conditional union are perfectly legitimate but there are other views of society, power and social progress.

In the case of statehood for the Northern Territory, the question to be asked is whether the economic, social or cultural interests of the NT are sufficiently distinctive, sufficiently different from those of Australia as a whole, to warrant federal forms of institutional protection. Conversely, if they are distinct, do they warrant protection on normative grounds? Will their protection improve the quality of Australian life?

Federalism, Assimilation and Integration

Federal institutions are designed to preserve regional variation within the broader framework of the national community. Federalism does not prevent an extensive degree of political integration, and indeed may facilitate integration by weaving minority groups into the fabric of national institutions and norms. There is, nonetheless, a constraint on the degree of integration which allows for a significant degree of diversity. We might expect, then, that federal models of government should be of particular interest to those who value or oppose the preservation of the distinctive features of Aboriginal society. (While the distinctiveness of Territorians may be open for debate, there is much less question that Aborigines have distinctive
cultural, social and economic interests.) For individuals in the NT who are wary of Aboriginal rights, there would be no logical inconsistency in supporting statehood for the Territory while resisting the extension of federal principles to Aboriginal communities. In a similar fashion, it may be logically consistent for supporters of Aboriginal rights to argue for the extension of federal principles to Aboriginal communities while resisting unqualified statehood for the NT.

One's preference among competing forms of political institutions depends very much on how they affect the balance of political interests and power within the community. As Schattschneider (1959) observed in his classic study of American political life,

all forms of political organization have a bias in favor of the exploitation of some kinds of conflict and the suppression of others because organization is the mobilization of bias. Some issues are organized into politics while others are organized out (emphasis added).

In short, the way in which political life is institutionally organised affects the interplay of interests within the political community. Institutions are not neutral in their political effects.

Federalism and Local Government

Although local governments are often referred to as the third 'level' of the federal system, this is a misnomer as local governments differ from the national and state governments in an important way. The powers exercised by the national and state governments have been assigned to them by the constitution, and this written division of powers cannot be unilaterally changed by either level of government. The powers of the national and state governments are constitutionally entrenched, or constitutionally defined. When conflicts emerge about which level of government should be doing what, they are settled ultimately by the High Court which has the authority to adjudicate the contractual nature of the federal division of powers. Local governments, however, exercise delegated powers. As Matthews (1980, 1) explains:

... local governments usually differ from federal and state governments in not having constitutionally guaranteed legislative powers. To the extent that they carry out legislative as well as executive functions, their powers are derived from legislation enacted by federal or state parliaments.
In most cases the powers exercised by local governments are lodged constitutionally with state governments, but have been delegated in turn by the state government to local authorities. Yet the state government retains the power to overturn local government decisions, to legislate directly in the local arena, and to change the powers exercised by local governments. It is ultimately the state government and not the courts which decides what local governments can and cannot do. Local governments are thus subordinate governments, 'creatures' of the state government.

Given the importance of the distinction between state and local governments to chapter five's analysis of local government options for Aboriginal communities, it is useful to consider a simple two dimensional model upon which various forms of government can be placed. The model's horizontal axis measures the scope of the government under question, with scope referring to both the size of the government's legislative domain and the importance of functions contained within that domain. More simply put, how much does the government do, what services and regulations does it provide, and how important are they? Different forms of government may vary considerably in their scope. State governments in Australia, for example, have much greater scope than do local governments. State governments also have greater scope than does the current NT government, although the difference has been shrinking steadily since the granting of responsible self-government in 1978.

Here it is useful to note as a caveat that governments may choose to 'occupy' only part of their legislative domain. Local governments in Australia, for example, generally do less than they are legally empowered to do; they tend to have a larger formal domain than an actual domain. This discrepancy can be important in any assessment of local government legislation which may create a potential domain which, in practice, is unlikely to be occupied. At times the decision of a government not to occupy fully its legislative domain may reflect the realities of financial constraint.

The model's vertical axis measures the autonomy of the government under question. The critical issue here is the extent to which the actions of the government can be controlled, constrained or reversed by other governments. Local governments fall towards the bottom end of the axis; their autonomy is limited in that their decisions can be overturned by their respective state governments. As discussed above, they are subordinate governments in law although in practice state governments rarely intervene and thus the degree of autonomy is greater than zero.
It should be noted that there are at least three aspects of autonomy rolled into one in the model. The first is the formal or constitutional autonomy of the government; can its decisions be overturned, amended or negated by another government? Does the government exercise delegated or constitutionally-entrenched authority? The second aspect is the fiscal autonomy of the government; does the government have the capacity to raise independently the revenue it needs, or is it reliant upon financial support from other governments? To the extent that it receives financial support from other governments, is that support conditional or unconditional? The third aspect is what might be termed the political autonomy of the government under question; to what extent do political realities enable it to chart its own course despite the appearance of constitutional and fiscal constraints, and to what extent do political realities constrain its actions despite what appears to be a good measure of constitutional and fiscal freedom?

Here a number of examples drawn from Canadian experience may be of some use in illustrating the interplay among these various aspects of autonomy. In the Canadian case, provincial governments clearly enjoy less formal or constitutional autonomy than does the national government, as the latter has the constitutional power to suspend, veto and in some cases override provincial legislation even if that legislation deals with matters solely within the jurisdiction of the province. In practice, however, those powers have fallen into disuse, and it is unlikely that current constitutional convention or political realities would enable the federal government to employ them. Thus provincial governments presently enjoy unprecedented political and fiscal autonomy despite lingering constitutional constraints. In a similar fashion, municipal governments in Canada, and in particular those representing large urban populations, exercise a degree of political autonomy well in excess of what one would predict from their constitutional status as creatures of provincial governments. Finally, it is worth noting that the autonomy of the national government, which is virtually unlimited in a formal sense, is limited in practice not only by the new Charter of Rights and Freedoms and by the realities of having to deal with ten relatively autonomous provincial governments, but also by both the international environment more broadly defined and by Canada's complex economic, cultural and political relationships with the United States more narrowly defined.

Discussions of Aboriginal self-government in Canada frequently focus on the autonomy axis, where there has been a prolonged and often acrimonious debate on the constitutional status of Indian governments. Are such
governments to exercise delegated authority, analogous to municipal governments, or are they to exercise constitutionally-defined powers, analogous to provincial governments? It may be the case, however, that the more critical issue is the scope rather than the autonomy of Aboriginal governments. What Aboriginal governments are able to do may well be more important than whether or not their actions are formally constrained by other governments, although control over land rights may provide an important exception to this argument. Certainly the municipal experience in Canada is that although provincial governments have virtually unrestricted power to intervene in the affairs of local governments, it is a power that is rarely exercised.

To expand on this discussion, Figure 1.1 presents three possible models of Aboriginal self-government. In the first (A), the Aboriginal government enjoys minimal legislative fiscal autonomy, although perhaps greater political autonomy, and its scope extends little beyond the provision of essential community services such as garbage collection, animal control and road maintenance. Such models of Aboriginal self-government may be readily incorporated under local government legislation. In the second (B), the government enjoys little more formal or fiscal autonomy but occupies a much greater legislative domain including, for example, primary education and the provision of some forms of social services. While its authority in such matters may be authority delegated from the state government, the Aboriginal government nevertheless plays a central role in the design and delivery of social and educational programs. In the third model (C), the Aboriginal government occupies an even larger legislative domain and, more importantly, enjoys a much greater degree of constitutional autonomy. While such a model is not on the Australian political agenda, it is worth noting that similar models are under active debate in Canada and have in fact been instituted by many tribal governments in the United States.

Figure 1.2 presents a model in which the Aboriginal government enjoys a significant degree of autonomy, but only within a relatively narrow domain (A). This restricted domain might include, for example, control over mining on Aboriginal land. In other respects (B) the Aboriginal government is analogous to conventional forms of municipal government. The broken lines (C, D and E) suggest that different Aboriginal communities may choose to occupy quite different policy domains. Given the diversity of Aboriginal communities and their varying capacity in terms of human and financial resources, it is clear that no single model could be imposed willy-nilly without taking into account community differences.
Figures 1.1 and 1.2

Figure 1.1: Aboriginal Governments

Figure 1.2: Aboriginal Government
Conclusion

For the Northern Territory as a whole, the drive for statehood entails the quest both for greater constitutional autonomy from the Commonwealth and for an expanded legislative domain including NT control over Aboriginal land rights, national parks and uranium mining. The political evolution of Aboriginal communities entails similar movement along the same two axes, albeit with quite different endpoints in mind. The quest is for political institutions enjoying some reasonable measure of autonomy and legislative scope. We might ask, then, how much movement in either direction is required for a reasonable and effective measure of Aboriginal self-determination or self-management? How much autonomy — constitutional, fiscal and political — is enough? What level of autonomy might threaten the political integration of Aboriginal communities into the broader Territorial and Australian bodies politic, or compromise broader national or Territorial interests? What should be the jurisdictional scope of Aboriginal governments? What scope is possible given the human and fiscal resources available to Aboriginal communities?

In drawing this discussion to a close, it is useful to return to an earlier quotation by Wilenski. In noting that federal constitutions restrict majority rule, Wilenski (1983, 84) argued that this restriction '... is the price paid by the majority to the smaller constituents for their entry into federation.' For the six existing Australian states, that price is part of the historical record. What remains to be seen, however, is the price that Australians at large are willing to pay for the entry of the Northern Territory into the Australian federal system as a full and equal state. What also remains to be seen is the price that the non-Aboriginal majority, both in the country and in the NT, is willing to pay for Aboriginal political institutions which would provide for a reasonable measure of Aboriginal self determination. With respect to this second question, the historical record gives little ground for optimism.
CHAPTER TWO
ABORIGINAL ISSUES AND POLITICAL CONFLICT
IN THE NORTHERN TERRITORY

Introduction

Gerritsen and Jaensch (1986, 145) have argued that what distinguishes political life in the Northern Territory is first the high proportion of Aboriginal voters and second 'the significance of Aboriginal policy in the political process.' Both factors play a critical role in the evolution of statehood and Aboriginal self-government in the NT, an evolution that takes place against a backdrop of considerable political friction between the Aboriginal and non-Aboriginal populations. The objective of this chapter is to sketch in that backdrop, an understanding of which is essential to the subsequent analysis of statehood's impact on the Territory's Aboriginal community.

The chapter will not provide an exhaustive chronology or summary of the political controversy that has swirled around Aboriginal issues in the Territory. Nor will an attempt be made to draw moral lessons from the pattern of conflict, to identify the forces of good and evil. Rather the intent is to set the historical stage, particularly for the reader who may not be all that familiar with the Territory; to examine the roots of conflict on Aboriginal issues; and to show how these roots are entangled in turn with the issues of statehood and Aboriginal political development.

The essential point to be made is that because conflicting interests do exist in the NT, institutional arrangements are important. While it would be pointless to hope for a conflict-free political life, one can hope for political institutions which give an effective voice to conflicting interests, institutions which do not predetermine the outcome of policy debate but rather give free rein to competing players, while at the same time giving the weak some power to defend themselves against more powerful political antagonists. Whether statehood will provide a set of institutional arrangements which will meet this criterion is an issue that will be pursued later in the analysis; here the preliminary task is to identify the competing interests which come into play in the political life of the Northern Territory, or at least those competing interests which are entangled in Aboriginal affairs.
Minority Protection in National and Subnational Communities

In the late 1700s, the American theorist James Madison argued persuasively that the civil liberties of minorities, including individuals, are better protected through national institutions than they are through the political institutions of subnational or state governments. Madison was trying to counter those who opposed a strong national government in the United States because of the threat such a government might pose to individual liberty, those who did not want to see the colonial tyranny of Great Britain born again in the tyranny of Washington over the states. In rebuttal, Madison argued that it was the tyranny of the majority that posed the greatest threat to individual liberty, and that this tyranny was more easily brought into play in the relatively homogeneous states than it was in the more diverse and complex national community. Thus to Madison a strong national government was not a threat to individual liberty but rather a means of protection. One hundred years later, Madison's case found expression in an 1897 manifesto put out by Australian Labor leaders just prior to the inauguration of the Australian federal state (cited in Crisp 1980, 31):

The people, the whole people, can safely be trusted - a locality, a clique, a sect may be narrow and bigoted but a whole nation, the electors of a great nation, are always just and generous.

Madison's argument, if perhaps not Labor's faith, has been borne out by American political experience in which the Bill of Rights and the Supreme Court have provided generous protection for individual liberty, and in which the greatest threat to liberty, at least in the field of civil rights, has been posed by more localized communities controlling state governments.

By extension, Madison's argument would imply that Aboriginal interests would be better protected, although not necessarily well protected, by national political institutions than by sub-national state governments in federal political systems. Sub-national communities tend to be more homogeneous than are national communities, more exposed to a narrow range of economic interests, and thus less tolerant of diversity and minority rights. If this line of argument holds, then statehood for the Northern Territory, which would entail a shift in power from the Commonwealth government to the new NT state government, should be of direct interest to NT Aboriginal communities. In this respect Madison's argument takes on additional weight for it appears to have been borne out by the history
of Aboriginal policy in the three federal states of Canada, the United States and Australia.

Aboriginal Policy in Federal States

The argument that Aboriginal interests are placed at greatest risk by the most proximate non-Aboriginal community, the community having the most immediate interest in Aboriginal lands and the exploitation of resources associated with those lands, can be traced to the Royal Proclamation of 1763 in which the British government set forth principles governing the conveyance of Aboriginal land in the New World. The Proclamation declared that Indian land could only be surrendered to the Crown, and for a consideration. In effect, the Crown became the middleman; land would be surrendered to the Crown and then sold by the Crown to white settlers. The Proclamation thus moved to protect Indian interests by prohibiting the private conveyance of title from Indians to whites. It was hoped that the new conveyance procedures would be less open to the impact of alcohol and bribes, that the more distant and abstract 'Crown' would deal with Aboriginal interests in a more equitable fashion than would individuals and communities at the cutting edge of the New World frontier.

When the foundations for the Canadian federal state were laid in 1867, the Constitution Act gave the new federal government the authority to legislate on matters relating to 'Indians and Lands Reserved for Indians' (s91, ss24). The delegation of Indian affairs to the federal government rather than to the provinces stemmed from an earlier concern of the British Imperial government:

A Committee of the English House of Commons in 1837 stressed the need to keep Indian affairs under strict Imperial control. They observed that the chief exploitation of Indians came from neighbouring land-hungry colonists who also controlled local and provincial governments. Only an Imperial intervention in favour of the Indians could help maintain the balance and keep the peace (Manuel and Posluns 1974, 162).

In 1867 the federal government was most distant from local affairs and was thus presumably better able than provincial governments to protect Indian interests; the federal government was to the provinces what the Imperial government had been to the legislative assemblies of the British North American colonies prior to Confederation (Sanders 1978, 2). This assumption carried through to the extended Canadian constitutional debate over Aboriginal rights in the 1980s, a debate in which Aboriginal organisations repeatedly tried to
curtail the involvement of provincial governments and in which provincial governments, not coincidentally, tended to express greater hesitation about Aboriginal constitutional demands than did the federal government.

In the American case, one also encounters evidence that the federal government has been less antagonistic towards Aboriginal interests than have the state governments. In large part this evidence springs from early patterns of settlement when federal policies of protection for Indians, no matter how half-hearted they may have been in design and enforcement, were systematically negated by settler communities and by the state governments they created in the wake of the expanding frontier (Berger 1985, 79ff). More recently, state governments consistently have been less willing than the federal government to recognise tribal sovereignty, and the intrusion of state hunting and fishing regulations onto Indian land has been an ongoing source of contention.

Unlike the case in Canada and the United States, Aboriginal affairs in Australia initially came under the jurisdiction of the states. Section 51 (26) of the Constitution gave the Commonwealth Parliament the power to 'make laws for the peace, order and good government of the Commonwealth with respect to ... the people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws' (emphasis added). Thus the Constitution precluded any federal involvement in Aboriginal affairs except in the NT and ACT, which were not states. Aboriginal reserves were established by the states and not by the Commonwealth, again with the exception of reserves in the NT. It should be noted, however, that although the states had jurisdiction over Aboriginal affairs, they were not legislatively active in the field. In Queensland, the state with the largest Aboriginal population, there was little legislative activity until at least the late 1950s (Hughes 1980, 290).

Commonwealth involvement in Aboriginal affairs dates from 1911 when it assumed responsibility for the NT from South Australia (Hanks 1984, 21). Commonwealth legislative activity, however, was restricted by s.51(26) to the NT despite a growing body of opinion (Hanks 1984, 22 ff) that the Commonwealth should play a more active and even dominant role in Aboriginal affairs throughout Australia. The door was finally opened for full Commonwealth involvement by the 1967 constitutional amendment which dropped the restrictive phrase (underlined above) in section 51, and repealed section 127 which had expressly prohibited the counting of 'aboriginal natives in reckoning the numbers of people of the Commonwealth.'
Since the election of the Whitlam Labor government in 1972, which marked the start of Commonwealth legislative activity in response to the 1967 constitutional amendment, there has been a consensus, at least within the academic literature, that the Commonwealth government has been more sensitive than the states to Aboriginal interests and concerns (Morse, 1984, Chapter 4). In this respect, the centrepiece of Commonwealth policy has been the Aboriginal Land Rights (Northern Territory) Act of 1976. Tasmania, Western Australia and Queensland have all been identified as governments at odds with relatively supportive Commonwealth policies, especially with regards to Aboriginal land rights. Queensland in particular has been the recipient of bad press in this respect (e.g. Anderson 1981; Hanks 1984, 26-7; Hughes 1980, 292ff; Rowley 1981; Yarwood and Knowling 1982, 277 ff). One of the most outspoken critics of state performance in Aboriginal affairs has been Tatz who, in a sweeping attack on Queensland and Western Australia, also included the Northern Territory (1980, 299):

Queensland and West Australia continue to fuminate, and to act, against Aboriginal interests and against Aborigines generally. They fiddle elections, tamper with votes, brush aside religious sensitivities, bulldoze sacred sites, negate land acquisitions, dismiss councils and whitewash royal commission findings of police violence and abuse of authority. The Northern Territory - as its new-found self-government muscles develop - is not far behind in word and deed.

In this study, no attempt can be made to assess the validity of such charges. However, there seems to be sufficient Australian evidence to support the basic Madisonian argument that Aboriginal interests find a more sympathetic audience within the national government than within the states. This suggests in turn that statehood for the NT could have a significant impact on Aboriginal interests if statehood entails a shift in power over Aboriginal affairs from the Commonwealth to the NT state. Yet before this suggestion can be accepted holus bolus it is essential to take a closer look at the political character of the Territory, for in several important respects the Territory fails to conform to the small, homogeneous communities that Madison had in mind.

Political Culture of the Northern Territory

(A) Regional Variation

The extent of regional variation within the Australian political culture is a subject of ongoing debate. While
there is general agreement that the extent of regional variation is much less than that in other federal states, there is less agreement whether the variation that does exist is of any significant magnitude. In his extensive examination of Queensland politics, Hughes (1980, 12) attaches little importance to regional variation even though, in popular mythology, Queensland is often seen as an 'atypical' Australian state:

In a great many respects Queenslanders resemble other Australians, and their politics bear a close resemblance to the political life of any other Australian state. Compared with the diversities of the American and Canadian federal systems, Australian politics strike the newcomer as exceptionally homogeneous: government structures almost identical in their inheritance from a standard nineteenth century colonial model; political parties national in their orientation; voters motivated primarily by a class structure which is uniform throughout the continent, informed by a national media and swinging uniformly in response to stimuli which are provided increasingly from Canberra in its economic, social, and foreign/defence policies.

Holmes and Sharman, however, dispute this view. While they concede that partisanship, not regionalism, is the most important factor shaping Australian voting behavior, they nonetheless argue (1977, 77) that '. . . within the boundaries of the partisan loyalties, state variations clearly still have some meaning.' Following an exhaustive analysis of regional variation in voting behavior, they conclude that an hypothesis of 'regional diversity, arising out of territorially sovereign boundaries', can be supported (1977, 57).

Initially it might seem that if any region in Australia was to stand apart in its political culture, it would be the Northern Territory. Certainly Territorians stress their own and their region's distinctive character, a matter on which other Australians tend to agree. As Dennis Rumley (1979, 6) explains, 'the European population of the Territory, miniscule for upwards of a century until recent decades, has existed undisturbed for long enough to develop a body of social and political attitudes which, although loose, are distinctive enough by comparison with other parts of the Commonwealth and stable enough to now be regarded as a separate political culture.' What is of immediate concern, however, is whether that culture embraces a distinctive perspective on Aboriginal affairs.
(B) The National Comparison

It would not be difficult to find individual examples of racial prejudice and hostility in the NT. What matters, however, is whether non-Aboriginal Territorians are relatively more prejudiced or hostile towards Aborigines than are Australians as a whole. Indeed, we can be more specific in that the existence of 'prejudice' per se is not essential; what matters is whether Territorians have a different or distinctive set of opinions, attitudes and beliefs with respect to Aboriginal affairs than do Australians at large.

Ideally, we would have survey data that would permit a systematic comparison of public opinion inside and outside the Territory. Unfortunately, Territorians are routinely excluded from the sampling frame of national surveys because, in the measurement of national opinion, what Territorians think is of so little consequence that to survey opinion in the NT is simply not worth the time and effort. In a purely random sample of 1000 Australians we would expect to find only 10 respondents living in the NT, and for a number of reasons there would be little point in survey firms going to the expense of including those ten in the national sample. First, it would be expensive because at least some of the ten would be located in remote areas. Second, it would be difficult to distribute proportionately the ten respondents among Aboriginal and non-Aboriginal Territorians, and among those living in cities and in the bush. Third, ten respondents would not be a large enough subsample to generalize with any confidence about Territorians at large; the NT subsample, for example, would include only two Aborigines who would not in any way be representative of the Aboriginal population. Given, then, that there are not enough Territorians to sway national opinion anyway, there is little point making the effort to include Territorians in any national sample.

As understandable as this conclusion may be, it does complicate our task. While there are national surveys of Australian opinion towards Aboriginal issues, and while some NT work has been done in this respect (a 1987 NARU survey figures prominently in Chapter Three), there is no single data set, or even easily comparable data sets, incorporating both Australian and Territorian respondents.

Fortunately, there is room for informed speculation, although in so doing several features of the Territorian environment must be kept in mind. First, there is far greater contact between the Aboriginal and non-Aboriginal populations in the NT than there is in the country at large, contact stemming from the fact over 22 per cent of the Territory's population is Aboriginal. Second, it is
reasonable to assume that non-Aborigines in the NT are better informed about Aboriginal issues than are Australians generally; their opinions are based on a broader and firmer knowledge base even though in some cases the content of that base may be open to question. Thus such opinions are likely to be more solidly anchored, less open to short-term fluctuation than are opinions elsewhere. Third, non-Aboriginal Territorians are more directly affected by Aboriginal issues than are most Australians in the six states. Aboriginal land rights, for example, are not a matter limited to abstract or principled debate; they have a direct impact on the economic and recreational interests that Territorians pursue. Hence opinion towards Aboriginal issues in the NT is shaped within a quite different set of constraints than is opinion in most other parts of the country, and certainly quite different from the constraints operating within the major metropolitan centres which dominate national public opinion.

It is not clear, however, whether these constraints push NT opinion in any particular direction, whether we should necessarily expect opinion in the NT to be more or less sympathetic than it might be elsewhere in Australia. Research on public opinion towards Aboriginal issues in Canada (Ponting and Gibbins, 1980; Ponting, 1987A and 1987B) has found only a very weak correlation between respondents' knowledge about Aboriginal affairs and the degree of support shown for Aboriginal aspirations. Respondents who were relatively well-informed about Aboriginal affairs were little more supportive of or sympathetic towards Aboriginal peoples than were respondents who knew next to nothing. The Canadian data also showed a weak relationship between the respondents' level of formal education and degree of contact with Aboriginal people, on the one hand, and sympathy for Aboriginal aspirations on the other. If we can extrapolate from the Canadian findings, we must reject any clear expectation that because Territorians tend to be better informed on Aboriginal issues than do other Australians, and more in contact with Aboriginal people, they will therefore be any more or less supportive of NT Aborigines.

In a passage cited above, Rumley argued that a distinctive NT political culture emerged from the small and relatively undisturbed European population. Although this population was overlaid by a substantial albeit largely transient Commonwealth public service, it was nonetheless able to create a distinctive cultural environment. However, while self-government has reduced transience in the public sector, the Territory's population is currently in a state of considerable flux. Between 1981 and 1986 it grew by 25.6 per cent, a quite staggering growth rate compared to that of the states. The NT has recently seen, and will continue to see, a steady influx of people from other parts
of Australia. A likely consequence of this will be the progressive although not necessarily rapid dilution of any distinctive political culture in the Territory. Some distinctive features, of course, will endure. While bringing a great deal of attitudinal and ideological baggage with them, newcomers will adopt parts of the Territorian culture as a means of fitting into the local environment. Longstanding Territory attitudes, including perhaps those concerning Aboriginal affairs, may be like 'Darwin rig', a costume that one can put on in order to fit in. It seems, however, that on balance newcomers will progressively move NT public opinion closer to the national mainstream.

Assessing Territory opinion towards Aboriginal issues is further complicated by the role played by Commonwealth Aboriginal legislation. In the six states, one can use public policy towards Aboriginal affairs as a rough and ready measure of the political culture. One can, for example, compare land rights legislation in South Australia and Queensland, and then use the comparison as a springboard for speculation about underlying differences or similarities in the state political cultures. In the NT, however, Commonwealth land rights legislation prevails. Although the NT government has consistently and often vigorously opposed parts of the Commonwealth land rights legislation (Eames 1983, 271), it is not at all clear what legislative path the NT government would pursue if given a blank policy slate. Thus while the Land Rights Act cannot be taken as an indication of how Territorians view Aboriginal affairs, neither should the opposition of the NT government to parts of that act be taken as an unambiguous indicator of the underlying political culture. Indeed, it can be argued that NT resistance to the Land Rights Act is not indicative of the government's stance towards Aboriginal policy more broadly defined, that on non-land issues the NT government has been relatively supportive of Aboriginal interests and aspirations.

Comparisons between opinion in the Territory on Aboriginal affairs and opinions in the country at large are further complicated by substantial changes in national opinion which have taken place over the past few years. Justice Woodward has described this change by first discussing the very supportive public opinion environment that greeted the initial land rights legislation in the mid-seventies (1985, 417):

The media and the people appeared to be solidly behind the Fraser Government in the steps it took. If anything, the trend of criticism appeared to be that the Government was not going fast enough. It seemed as though the wider Australian population was prepared to make just, or in some eyes even
generous, amends for the past neglect of its most deserving and disadvantaged minority.

By the early 1980s, however, Woodward (1985, 417) felt a marked change in Australian public opinion had occurred:

All that has changed dramatically in the last few years. The views of the mining industry — expressed through the pages of financial journals and in an effective publicity campaign, as well as in submissions to ministers and departments responsible for developing the nation's resources — have obviously struck a chord with large numbers of Australians. The proponents of Aboriginal land rights are now on the defensive. It seems that it will be difficult for them to make any great strides forward in the foreseeable future, and some gains already made are at risk.

While Woodward's pessimism on this account is not universally shared (see Yarwood and Knowling 1982), it does coincide with a 1984 ANOP survey of public opinion in metropolitan Australia towards Aboriginal issues. The survey was commissioned by the Department of Aboriginal Affairs following an extensive media campaign by the Australian mining industry, a campaign which was sharply critical of existing land rights legislation. Here it is interesting to note the editorial reaction of the Northern Territory News (29 August 1985) to the survey, a reaction which is worth citing at length not only for the light it sheds on NT opinion but also for the implicit assumption that national opinion on land rights was very much in line with that in the NT:

The poll shows that fewer than one in five Australians supports the granting of land rights to Aborigines.

The survey's findings will come as no surprise to Territorians who have been forced to live with land rights since 1976.

What will come as a surprise, however, is the conclusion that middle Australia objects to land rights because of 'prejudice through fear, ignorance, misinformation and soft racism.'

Balderdash and rubbish! Middle Australia objects to land rights because it does not want to see an inverse form of apartheid imposed here. It does not want permanent black ghettos. It does not want mining and farming, the biggest two export
... earners, killed. And it cannot countenance institutionalized racial divisions. . . .

In the Territory's experience land rights has not done what it was going to do: give Aborigines a place under the sun, restore their pride and provide them with a reliable source of income.

It has done precisely the reverse and, in so doing, it has helped create a class of parasites with vested interests in expanding the concept Australia wide.

While it is tempting to dismiss the 1984 survey as a short-term response to the mining industry's campaign, the changes in the public opinion environment which concerned Justice Woodward have much deeper roots. In pursuing its Aboriginal policies of the 1970s, the Commonwealth drew from a relatively deep reservoir of supportive public opinion, a reservoir fed from four quite distinct albeit related sources. The first was a significant measure of guilt felt by the non-Aboriginal population, guilt over both the past treatment and present condition of Aborigines. The second was the ideological dominance of liberalism, a belief that state intervention should be used aggressively to correct the position of disadvantaged groups within the society. The third source was fiscal capacity; governments in the 1970s enjoyed a substantial revenue flow fed by an expanding economy, a flow which enabled new social programs to be funded without adversely affecting the income of average Australians. As Jennett (1982, 2) explains,

The economic climate was such that Australians could afford to 'discover' such issues as poverty and racism and do something about them. The funding for special programs came out of economic growth and therefore was not really seen to be achieved at anyone's personal expense.

The fourth factor was an international climate in which Third World countries enjoyed a very supportive press, and in which a great deal of attention was given to the quest for self determination by colonial and indigenous peoples across the world. This climate gave Aborigines the 'leverage of international opinion in relation to the Australian Government' (Yarwood and Knowling 1982, 280).

Although her terminology is somewhat different, Jennett (1985, 16) paints a similar picture of the policy environment during this period:

Throughout the 1970s and 1980s Aborigines have established a place for land rights and self-
determination on the public policy agenda. From their relatively powerless and resourceless position Aborigines have been using expertly the 'politics of embarrassment'. Both at home and abroad they have been turning liberal democratic egalitarian and Christian rhetoric back on the majority society to considerable effect. Their success has to a large extent been as a result of the tirelessness of their lobby of governments, churches, unions, and other possible sources of support and their sense of injustice which will not be abated by non-Aboriginal counter-arguments.

Jennett's optimism, however, may well be misplaced. The sources which fed the reservoir of supportive public opinion have been drying up. Guilt over the Aboriginal condition is less evident today than it was in the past, and is likely to fade even more if Aborigines succeed in gaining greater control over their own land and lives. Liberalism is no longer the ascendant ideology, and finds itself fighting a rearguard action against neo-conservative challengers. The fiscal capacity of the Australian state to fund existing social programs, much less new programs, has been sharply reduced as governments face an increasingly restrictive fiscal environment. And, it can be argued, the Australian government today is less exposed to international embarrassment on Aboriginal affairs than it has been in decades past, although the 1988 bicentennial celebrations will create opportunities for high-profile protest politics. While the reservoir of supportive public opinion is not yet dry, the long-term outlook is not good.

Although the mood of the public will not dictate the finer points of Commonwealth or NT Aboriginal policy, it nevertheless serves as an important constraint. Note, for example, a 16 March 1985 address by Clyde Holding, then Minister of Aboriginal Affairs, to a Sydney meeting of the Catholic Commission for Justice and Peace:

> It is essential to remember that, if national land rights legislation or any other legislation designed to create rights for the Aboriginal people of this nation, is to be enduring and successful it must have the support of the majority of Australians. It cannot ignore the rights, aspirations or concerns of the majority of Australians.

National opinion is important, but so too is opinion within the Territory, particularly if substantial movement is made towards full statehood for the NT. As argued above, the key issue with respect to statehood is the difference, if any, between public opinion in the NT and in the country at large
on Aboriginal affairs. To explore this difference further it is useful to consider the impact of frontier mythologies on the NT.

The Frontier and Economic Development

One of the most appealing characteristics of the NT is the frontier mythology which permeates so much of the region's popular and political cultures. The images associated with taming and settling the interior frontier, with subjugating a hostile yet supposedly resource-rich natural environment, played a major role in the historical development of Australia, just as the images associated with the western frontier played a major role in shaping both the popular mythology and political culture of the United States. For most Australians, however, the frontier has been closed for some time. Yet frontier images and, to some degree, frontier realities continue to survive in the NT even though life in Darwin and Alice Springs is coming to resemble more and more life in the metropolitan heartland.

A frontier mythology and its concomitant political ideology are sustained in large part by the isolation of the Territory, an isolation that has been reduced but not eliminated by modern technology. As Rumley (1979, 10) explains, 'isolation of a dependent Territory spells remote control and not unnaturally fosters distinctive attitudes to government, usually resentful.' This point is taken up at greater length by Heatley (1979, 3):

'It [the Territory] has been remote not only from major centres of population, commerce and industry but also from those governments which have been responsible for administering it. Both factors have proved to be of crucial importance to the economic and political development of the Territory... The feeling of collective identity and separateness based on shared experiences and the resultant sense of fierce loyalty to the Territory, so marked as features of its history, were largely responses to the fact and to the consequences of isolation.

At the core of the frontier mythology lies a virtually unquestioned belief in the value of economic growth and material advancement. Nationally, this belief has been deeply embedded in the country's political culture, and has shaped the national party system. As Emy (1978, 685) notes, 'the priority of national development has legitimized a materialist conception of politics which has severely handicapped the parties' ability to offer reflective and intellectual leadership as a means towards interpreting the meaning of social progress and of clarifying social goals.'
In the NT, this handicap has been perhaps even more pronounced as the belief in economic development and growth has found unqualified expression in the Country Liberal Party, which has formed the government of the NT since the introduction of responsible government in 1978.

The fact that the CLP has been the NT's only governing party makes it difficult and perhaps pointless to try to untangle the views of the party, on the one hand, and the views of the NT government, on the other. The essential point is that there is a shared belief in the value of economic development, and in the necessity for the NT government to play a very active role in encouraging economic growth. As Heatley (1986, 231) explains:

The NT government, a Country/Liberal Party (CLP) administration, has consistently advocated rapid, sustained and balanced economic development as its most important policy objective. It has continued the traditional strategies - the expansion of the existing base, the fostering of agriculture, tourism, manufacturing and service industry, the attraction of capital investment, the containment of the inherently high cost structure of Territory producers, the provision of infrastructure, and population growth. Traditional also has been its view that government must act as the engine of development.

A preoccupation with economic development is a general characteristic of state governments. What may be unique to the NT, however, are both the intensity of that concern (Reece and Coltheart 1981; Warhurst 1981) and the importance of government as the engine of economic development. As Heatley has written elsewhere (1979, 169), 'reliance on government is the epitome of the political culture of the Territory.' Here Gerritsen and Jaensch argue (1986, 147) that the narrowness and fragility of the Territory's economic base have made economic development the 'sine qua non' of state politics. They point out (1986, 151), that the NT government plays a central role in the economy, both through its expenditure of hundreds of millions of dollars of Commonwealth grants, and as the Territory's principal employer. Whereas across Australia state governments employ 15.3 per cent of the labour force, in the NT this figure climbs to 22.4 per cent. (In addition, the Commonwealth employs another 9.8 per cent of the NT labour force, compared to only 7.3 per cent across Australia.) The indirect economic impact of the public sector may be even greater given that a large part of private sector employment and activity depends on public expenditures, and that 'the abundance of public revenues has
also been instrumental in attracting large-scale private investment' (Heatley 1985, 6).

In their analysis, Gerritsen and Jaensch (1986, 150-51) pay particular attention to the role economic growth plays in electoral support for the CLP:

The governing CLP is the party of the service sector. It is the party of lawyers, real estate agents, insurance salesmen, motel proprietors, shopkeepers, etc. - the party of small, independent businessmen. Their interests require population growth and prosperity.

Later in the same analysis (1986, 152), the two authors expand upon this point:

... the CLP is dominated by a self-employed, petty bourgeois class who require the state employees as consumers ... the employment of these persons was achieved without the taxes that would be an inevitable consequence elsewhere in Australia because of the unparalleled generosity of Commonwealth budgetary assistance to the Territory. The grandiose 'big government' of the Territory's ministers imposed no extra tax burden on the Northern Territory's taxpayers because the reviled 'Canberra' bore the burden.

While not quarrelling with this analysis, I would also suggest that the CLP's commitment to economic growth goes well beyond the party's electoral concerns and beyond the economic interests of its principal supporters; it also embraces the very core of the NT's frontier mythology and political culture.

How, then, does the frontier mythology, and its attendant emphasis on economic development, relate to Aboriginal interests? The quick answer is not very well at all. Certainly the early frontier environment in Australia, even more so than in Canada and the United States, was a very harsh one for Aboriginal peoples. As Morse (1984, 7) explains:

Settlers viewed the original inhabitants as 'primitive' and subhuman possessing nothing recognizable to them as governments, cultures, land ownership, economies, or laws. Therefore, there was no willingness whatsoever to negotiate treaties, to develop friendship, to promote trade, to purchase land, or to engage in government-to-government relations.
While the frontier environment in the NT today is nowhere near as harsh, remnants of earlier attitudes are sustained by the ongoing clash of economic interests between the Aboriginal and non-Aboriginal residents of the NT.

Before turning to this clash, it is useful to note a feature of the American frontier experience that has some applicability to Aboriginal affairs in the NT. There is no question that the flames under the American melting pot, the flames that were to break down immigrant identities and produce a new amalgam, a new American national identity, burned with the greatest intensity on the frontier. Whereas ethnic enclaves were able to survive and in many cases prosper in the metropolitan centres along the east coast, at the cutting edge of the frontier they were exposed to rapid and thorough erosion. To a degree, the same assimilationist phenomenon can be detected on the Territorian frontier in Australia, one that reduces tolerance towards an Aboriginal population rejecting assimilation into an Australian blend (Rowley 1970, 241). It is in part for this reason that Pittock (1979, 13) describes the 'materialistic expansionist frontier values' in Western Australia, Queensland and the NT as particularly threatening to Aborigines.

Beneath the influence of any frontier mythology, however, stands a fundamental clash of economic interests. Proponents of economic development recognise that development may mean, at least in some cases, the disruption and even destruction of a traditional hunter-gatherer society. Yet this impact is seen as inevitable, avoidable at best only in the short term. The traditional Aboriginal economy, and its concomitant lifestyle, are seen to be in a process of rapid and irrevocable decline. For their part, Aborigines argue that for many and perhaps most Aboriginal communities, the traditional economy may well be the only viable economy, or at least the only economy that is at all compatible with traditional social and cultural values. (For a discussion of this conflict in the Alaskan setting, see Berger 1985.)

There is nothing illegitimate or sinister about this clash of interests, nor should it be surprising that the conflict spills over into the political arena. Concern arises, however, from the fact that Aborigines find themselves pitted against not just mining interests, pastoralists, or the tourist trade, but also against the NT government in its pursuit of economic development. The NT government is not a neutral arena within which a legitimate clash of economic interests can be played out, for the government is also an active player with its own economic interests and agenda. Indeed the NT government is the dominant economic player. Thus to label Aborigines as anti-development, a label which is true in part but not
universally applicable, is to cast them as opponents to the Territory government.

The Conflict Agenda

Conflicting economic interests are to be expected given the co-existence of two very different world visions in the Territory, one shaped by traditional Aboriginal values and one by the values of a European frontier community. Neither vision is illegitimate, and we should expect both to find expression within the political arena. However, the fact that the NT government is the dominant economic player in the Territory, a player committed to economic development, means that Aboriginal interests are often pitted not only against competing private interests but also against the NT government itself. As a result we find in the Territory a 'conflict agenda' in which Aborigines and the NT government routinely although not universally take opposing positions. The resulting tension is of such fundamental importance to the statehood debate that it warrants further discussion as a preamble to the next chapter's discussion of statehood.

(A) The Aboriginal Land Rights (Northern Territory) Act 1976

The Aboriginal Land Rights (Northern Territory) Act 1976 provides a convenient point of departure for examining the entanglement of Aboriginal affairs with the economic development concerns of the NT government. Indeed, there are few items on the NT's conflict agenda which are not in some way entangled with the Act.

The Land Rights Act decisively broke the existing pattern of Aboriginal legislation in the NT. When the Commonwealth assumed control of the NT in 1911, there was no legislative foundation for Aboriginal affairs in the Territory. As Heatley (1979, 136) explains:

early legislation and regulations were based in the South Australia Act [Northern Territories Aborigines Act] of 1910. In 1918 they were replaced by a comprehensive Aboriginals Ordinance which served as the basis for administration until 1953. Like its predecessors, the ordinance was founded on the twin precepts of protection and control and was deeply steeped in the philosophy that the Aboriginal race had no future in Australian society. By further amendments in the 1920s and 1930s, the ordinance became steadily more restrictive and onerous.

In 1953, the Commonwealth moved into a new legislative phase based on the assumption that Aborigines were not after all going to disappear, and therefore should be prepared for
assimilation into the broader Australian society. A 1951 Commonwealth-State Conference on Native Welfare had prompted fresh federal legislative initiatives in the NT. The chairman of the conference, Paul Hasluck, Commonwealth Minister for the Territories, expressed the Commonwealth's new philosophy in the following statement:

Assimilation means, in practical terms, that, in the course of time, it is expected that all persons of Aboriginal blood or mixed blood in Australia will live like white Australians do. The acceptance of this policy governs all other aspects of native affairs administration.

This policy of assimilation held sway until the early 1970s when the election of Whitlam's Labor government led to its replacement by a new emphasis on self-determination. In a speech on 6 April 1973 to a meeting of the Ministerial Aboriginal Affairs Council in Adelaide, Prime Minister Whitlam stated that his government's policy was 'to restore to the Aboriginal people of Australia their lost power of self-determination in economic, social and political affairs' (Cited in Heatley 1979, 149). Whitlam created the new Department of Aboriginal Affairs (an initiative with a questionable contribution to Aboriginal self-determination) and, in a move destined to have long-term consequences for the NT, appointed Justice A.E. Woodward to head an Aboriginal Land Rights Commission in the NT. Woodward was to enquire into and report upon 'the appropriate means to recognize and establish the traditional rights and interests of the Aborigines in and in relation to land, and to satisfy in other ways the reasonable aspirations of the Aborigines to rights in or in relation to land . . .'.

Justice Woodward presented his first report in July 1973, and his second report in May 1974. The second report included a set of recommendations which provided the foundations and much of the detail for the Land Rights Act. Although the Whitlam government was defeated before the legislation could be passed, the Act was supported in turn by Fraser's Coalition government and was proclaimed on Australia Day, 26 January 1977, providing the first formal recognition of Aboriginal title in Australia.

It should be stressed at the outset that the Act was a Commonwealth Act; it was not enacted by, and indeed was in large part opposed by, the Legislative Assembly of the NT. It was a reflection of national rather than Territorial sentiment. Nevertheless, the Act applied only to the Territory; it had no legislative applicability in the six states. Therefore the Act could be portrayed by its opponents as an outstanding example of Commonwealth interference in Territory affairs, of the Commonwealth
acting in the Territory in a way that it could not and would not act in the states.

The point that Territorians, quite apart from the substance of the Land Rights Act, reacted to Commonwealth interference in Territorian affairs is an important one to stress. Suspicion of and hostility to Canberra lie at the very core of the Territorian political culture. As Gerritsen and Jaensch (1986) explain:

The relations between the Commonwealth and the state governments can normally best be described as a stable condition of mutual suspicion. But relations between the Territory and the Commonwealth go beyond even that. The NT government exhibits a hostile suspicion towards Canberra that appears to verge on paranoia but in reality reflects the longer term economic and political difficulties faced by the Territory. 'Canberra' assumes an importance in Territory politics that is unique among Australian states; 'Canberra' is the fulcrum of Territory politics. This is for both constitutional and economic reasons.

Thus quite apart from how Territorians may have felt about Aborigines or Aboriginal issues per se, the Land Rights Act was difficult to swallow because it was Commonwealth legislation imposed upon the NT.

The Act did a great many things, among which the following are of particular importance for the present analysis:

- by the transfer of Aboriginal reserves and missions, the Act gave Aborigines immediate title to approximately 19 per cent of the NT, and opened up a further 30 per cent to Aboriginal land claims, conditional on proof of traditional ownership rather than need. Inalienable freehold title to the land was placed in Land Trusts.

- Aborigines were given the right to control access to Aboriginal land. This control extended to the right to refuse access for mineral exploration.

- traditional Aboriginal owners were given a veto power over mineral development, even if access to Aboriginal land for mineral exploration had been given. This veto could only be overridden in the national interest by both Houses of the Commonwealth Parliament. This power of veto,
however, did not apply to mining interests on Aboriginal land which existed prior to June, 1976.

- Aborigines were entitled to statutory royalty equivalents, and were able to negotiate with mining companies for royalty payments in excess of statutory requirements. With the passage of the Northern Territory (Self-Government) Act, 1978, royalties from mines on Aboriginal land were paid to the NT government, and then paid out by the NT government to the Aborigines Benefit Trust Authority.

- Aborigines were given a powerful political voice through the creation of the Central and Northern Land Councils. (The Tiwi Land Council was created subsequently.) The Land Councils were charged with representing traditional owners in matters of mineral development and land use.

The essential core of the Act is the control it gives Aborigines over their own land. Altman and Peterson (1984, 52) conclude:

if land rights cannot create economic equality they can create greatly increased opportunities for Aboriginal peoples to exercise control over their own lives. The most obvious way in which this can be achieved is through the right to control the activity on Aboriginal land.

The Act by no means excluded the NT government from Aboriginal affairs in relation to land matters. The original Labor draft of the Act was amended by the Fraser government to give the NT Legislative Assembly responsibility for providing complementary legislation in the areas of wildlife protection, control of entry onto Aboriginal land and adjacent waters, and the protection of Aboriginal sacred sites (Heatley 1979, 154). Such legislation is now largely embodied in The Crown Lands Act 1978, The Aboriginal Sacred Sites Act 1978, and The Aboriginal Land Act 1978. It should also be stressed that the Act does not curtail the NT government's powers with respect to such critically important fields as health care, education, housing, welfare and local government. Thus the Act does not prevent, and the Commonwealth government has taken no steps to prevent, NTG programs, schools, clinics, welfare offices and local government offices operating in Aboriginal communities on Aboriginal land. In short, while the Act provides inalienable Aboriginal title to a substantial portion of the Territory, it does not give Aboriginal owners exclusive control over that land. It remains a matter of contention whether, for example, the
powers of the NT government with respect to Aboriginal communities on Aboriginal land differ significantly from the powers of the NT government with respect to non-Aboriginal communities on freehold land.

Although NT legislation plays a significant role in the protection of Aboriginal land, this role is complementary to Commonwealth legislation. Therefore the NT government's policy leverage on land owned or under claim by Aborigines (close to 50 per cent of the Territory) is curtailed by the Act. This curtailment is critical given the extent to which Aboriginal land is entangled in the NT government's development interests with respect to mining and tourism, and given the central role that economic development plays in the political agenda of the NT government.

It is interesting to note that Territorians appear to see land rights as an area in which Aborigines receive particularly favourable treatment. Table 2.1 reports the results of a Times on Sunday/Reark survey of over 300 Territory electors, conducted prior to the 1987 Commonwealth election. As the table shows, 63 per cent of the

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<th>Table 2.1</th>
<th>Territorial Opinion on Aboriginal Issues</th>
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<td><strong>A)</strong> When it comes to public or government housing, would you say Aboriginals are:</td>
<td></td>
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<tr>
<td>Not treated well enough</td>
<td>6%</td>
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<tr>
<td>Treated fairly</td>
<td>44%</td>
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<tr>
<td>Treated too well</td>
<td>44%</td>
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<td>Don't know/can't say</td>
<td>6%</td>
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<td><strong>B)</strong> When it comes to education, would you say Aboriginals are:</td>
<td></td>
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<tr>
<td>Not treated well enough</td>
<td>11%</td>
</tr>
<tr>
<td>Treated fairly</td>
<td>58%</td>
</tr>
<tr>
<td>Treated too well</td>
<td>27%</td>
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<tr>
<td>Don't know/can't say</td>
<td>4%</td>
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<td><strong>C)</strong> When it comes to land rights, would you say Aboriginals are:</td>
<td></td>
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<tr>
<td>Not treated well enough</td>
<td>5%</td>
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<tr>
<td>Treated fairly</td>
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<tr>
<td>Treated too well</td>
<td>63%</td>
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<td>Don't know/can't say</td>
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respondents felt Aborigines were 'treated too well' when it comes to land rights, with 44 per cent and 27 per cent respectively holding that opinion with regards to housing and education. Overall, the table does not suggest a very deep reservoir of sympathy for Aboriginal conditions in the Territory.

B) Mining in the Northern Territory

The interests of Aboriginal people and those of the State governments in relation to mining are in conflict over some important matters. While Aboriginal groups throughout the country are attempting to establish viable and worthwhile life-styles, economic pursuits and a stable niche within the Australian milieu, State governments support a 'development' strategy that is largely dependent on the exploitation of non-renewable resources, particularly minerals, with little concern for the problems they pose for the attempts by Aboriginal communities to reconstruct their societies (Langton 1983, 385).

From the outset the NT government opposed the mining provisions of the Land Rights Act, arguing that 'Aborigines should not have a right of veto, should not be able to negotiate royalties and should not have a right to statutory royalties' (Altman and Peterson 1984, 48). The government's concern with the mining provisions of the Act stemmed from the importance of mining to the existing Territory economy, and from the key role that mining would play in the future economic development of the Territory. Since 1960, when mining overtook pastoralism as the major income-earner in the Territory (Heatley 1979, 8), mining has been the motor of economic growth and development albeit a motor welded to the chassis of massive government expenditures. Yet with 34 per cent of the Territory under Aboriginal ownership and 13 per cent under Aboriginal claim, it is a motor that can only be partially controlled by the NT government. While the NT government is not opposed to Aboriginal communities benefitting from mineral development, it is opposed to such communities being able to control the pace of mineral exploration and development, or indeed whether such exploration and development will occur.

In its opposition to the mining provisions of the Land Rights Act, the NT government found a forceful ally in the mining industry, an ally quite prepared to carry the fight into public forums where the NT government itself was less willing to venture. This alliance was not unexpected given that the two shared the same commitment to economic development, and the same belief that mineral activity is a
major key to the NT's economic future. The complementary political pressure exerted by the two eventually forced the federal government to reconsider aspects of the 1976 legislation, a matter discussed below. Here it should be noted parenthetically that the coincidence of industry and governmental interests in the NT is of some considerable import to the statehood debate. Statehood, at least as envisioned by the NT government, would give that government greater control over mineral exploration and development. This in turn can be expected to increase the political clout of the mining industry given that its clout tends to be greater with state governments in general, and with the NT government in particular, than it is within the Commonwealth political arena where the industry is but one voice in a much larger chorus of competing voices.

The industry's position on Aboriginal land rights was most comprehensively expressed in 1981 by the Australian Mining Industry Council (AMIC). In Aboriginal Land Rights: The Need for a National Consensus, (reprinted in the Mining Review March 1982), the AMIC stated that Australia had 'a special responsibility to make its resources available to the world community on equitable terms'. Unfortunately, the AMIC maintained, the exploration restrictions imposed on Aboriginal land (along with those imposed on Heritage areas, wilderness areas and national parks) made it difficult to know the extent of the nation's mineral stockpile, while development restrictions would mean that many of those resources would be locked away, untapped. Here, incidentally, the AMIC referred to the Land Rights Act as an act imposed by the Federal Government on the Northern Territory, a view of the act shared by the NT government.

The AMIC decried both the lack of a time limit on Aboriginal land claims and what it saw as an overly narrow perspective brought into play in land claims: 'in AMIC's view, the Federal Land Rights Act permits the Land Commissioner to recommend the grant of land as Aboriginal land without proper regard to the national interest or the rights of other land users'. The AMIC argued that an Aboriginal veto over mineral activity was inappropriate given that mineral rights were vested in the Crown on behalf of the whole Australian community. The AMIC also argued that the Land Rights Act gave Aboriginal communities the power to extract inappropriately high levels of compensation for mineral activity, and that it unnecessarily delayed the approval process for mineral exploration.

In short, the AMIC argued that the Land Rights Act was a deterrent to mineral exploration and development, that it was not in the national interest, that for the purposes of mineral activity Aboriginal land should be treated the same
as other Crown land in Australia, and that Aborigines should have the same rights with respect to mineral activity (ie: no veto) as other Australians enjoyed:

The mining industry is fundamentally opposed to Aboriginal control of mining on Aboriginal land and the creation of a special 'Aboriginal title' with rights greater than those afforded Australian landowners generally. Rights that further restrict access to land for prospecting and mining are unwarranted.

The AMIC also adopted a state rights approach to Aboriginal land rights, an approach which was very much in line with that favoured by the NT government:

The mining industry proposes that where title to land is granted to Aboriginals, the terms and conditions regulating access to that Aboriginal land for exploration and mining should be determined by State governments in accordance with existing land management and resource development laws or special State laws developed to best reflect the general needs of Aboriginals and miners within individual State borders.

It should be stressed that the Aboriginal veto to which the AMIC objected has always been subject to the national interest; the Commonwealth government can, through a resolution passed by both Houses of Parliament, override the opposition of traditional owners to mineral development. It is also worth noting that in the special case of uranium mining, several elements of the 'national interest' come into play in a manner which further restricts the ability of the NT government to control its own economic destiny. Indeed, the case of uranium provides a good illustration of how the national interest, as expressed through the Commonwealth government, can play a decisive role in Territory affairs.

While state governments, but not the NT, 'own' their uranium resources, the Commonwealth effectively controls the development of those resources through the Atomic Energy Act 1953, 1978 and the Environmental Protection (Nuclear Codes) Act 1978, acts which set uranium apart from other mineral resources and which stake out a special claim for the Commonwealth to act in the national interest. (In the NT, Commonwealth control and ownership of uranium also stems from s.69 of the Self-Government Act.) The Commonwealth also controls export licences for uranium. Prior to the 1983 federal election, the Labor party announced its intention to phase out uranium mining in Australia, a policy which would have had a drastic
impact on the economic situation and potential of the NT. Subsequent to that election, the Labor government modified its policy to accommodate two existing mines in the NT, and then to permit the development of the Roxby Downs uranium deposit in South Australia. At the time that the SA development was being approved, however, development of the Koongarra uranium deposit in the NT was blocked, development which in this case had been approved by the traditional owners.

The somewhat erratic evolution of Commonwealth uranium policy, and the extent to which that evolution is shaped by national partisan considerations and environmental lobbies, illustrates the vulnerability of the NT to external factors. In the case of uranium mining, this vulnerability would persist even in the case of statehood so long as the Commonwealth government continues to stake out uranium mining as an area of national concern. The more general concern with Commonwealth 'interference' is captured in the following statement in the NT Department of Mines and Energy Annual Report for 1985/86 (p. 9):

Denial of access to highly prospective land due to Commonwealth legislation and policies continued to be a cause of considerable discouragement to an industry and a Government seeking to develop Northern Territory resources. This was particularly so in the case of the Alligator Rivers Region, considered to be one of the world's richest mineral provinces, whose full development could greatly improve Australia's economic situation. With much of it already enclosed by the boundaries of Stage I of the Kakadu National Park and excluded for the purposes of mining development, the possibility of the Commonwealth extending the park over the large area designated Kakadu Stage II and III added to the uncertainty for companies with pre-existing exploration investment in the area and those seeking to explore.

The extent to which the Land Rights Act has impaired economic development in the NT is difficult to assess given that world markets for base metals have been depressed for most of the time in which the Act has been in effect. In a comparative analysis of Aboriginal rights in relation to mineral activity, McGill and Crough (1986, 8-9) conclude that 'the problems of the mining industry [in Australia, Canada and the United States] are not attributed to Aboriginal or Indian resource rights', but rather to increased input costs, depressed prices, and exchange rate losses. However, the perception persists that the Land Rights Act has acted as an impediment to mineral activity,
particularly with respect to exploration. As Trollope (1986, 170) notes:

The Territory government, supported by the mining lobby, has continually argued that the veto over mining on Aboriginal land is stifling Territory development. The government points to the fact that no new mineral exploration agreements have been reached since 1976, that approximately fifty per cent of the Territory is claimed or under claim and that expenditure on mineral exploration has declined....

In May, 1987, the Land Rights Act was amended to remove the Aboriginal veto to development if approval has been given by the traditional owners for mineral exploration. As Northern Land Council Chairman Galarrwuy Yunupingu explains (Sunday Territorian, 7 June 1987), Aboriginal consent to the legislative amendments came as a concession to the national interest, and to the mining industry lobby:

We've made our concessions. We've compromised our position in the national interest. And we can't do any more than that.

The amendments remove our right to veto mining. If we agree to exploration, we have agreed to mining - without knowing the scale of disruption this might mean for our country or our law .......

We have, it is true, gained the right to say no to exploration and then be left alone for five years, if that's what we want to do. But our control over the fate of our country - which is central to true and effective land rights - has been weakened.

These changes come at the end of a long and concerted campaign by the powerful mining companies. Instead of getting on with the job of earning money for their shareholders, they have spent millions of dollars attacking the land council and spreading the fallacy - their sacred myth - that we and we alone have been responsible for holding up progress.

Once again, then, we see the impact of national events on the Territory scene, although in this case the impact of those events coincided with the general development interests of the NT government. This coincidence is more the exception than the rule.
C) Tourism and National Parks

Tourism has become an important and rapidly expanding component of the Territory's economy. In 1985/86, tourists in the NT spent $289 million, an increase of 165 per cent over the 1981/82 season (Northern Territory Tourist Commission Annual Report, 1986, 9). During this period expenditures by overseas tourists increased by 219 per cent, with interstate tourist expenditures increasing by 203 per cent. Tourism's impact on employment and retail trade throughout the Territory is thus pronounced, and has come to rival that of the mining industry. As a component of the Territory's economy, tourism has a major advantage of being relatively immune to the vagaries of the international market, vagaries which tend to destabilize the mining industry and, through it, the broader Territory economy. As Gerritsen and Jaensch (1986, 149) point out,

the mining industry has developed in such a way as to further highlight both the narrowness and the fragility of the Territory's economic base ... the Territory's mining production spans only a narrow range of products [uranium, 65 per cent; bauxite, 14 per cent; manganese, 10 per cent; gold, 6 per cent] and so is highly vulnerable to international commodity price fluctuations.

Tourism, then, is 'the latest candidate for the Territory's economic salvation' (1986, 150). Tourism is also seen as having less adverse impact on Aboriginal communities and the Territory environment, although claims on the first count may be somewhat exaggerated.

In its attempts to develop the tourism industry, the NT government has frequently come into conflict with both Aboriginal communities and the Commonwealth government, conflict stemming from two inter-related factors. The first is that most of the prime tourism sites in the NT lie on land that has been claimed or is under claim by Aborigines. Examples here include Uluru Park (with Ayers Rock and the Olgas), Kakadu National Park and Katherine Gorge. As the NT Conservation Commission noted in its 1985 Annual Report,

The Commission continued to develop an active approach towards co-operation with Aboriginal Land Councils and traditional land owners within the Territory. With large areas of prime conservation land now under Aboriginal ownership, the mutual benefits of co-operative management gained further recognition. The need for shared and imaginative conservation management of these lands was accepted as a challenging opportunity.
The second factor is that the Commonwealth has retained federal jurisdiction in Uluru and Kakadu with the Australian Parks and Wildlife Service assuming the primary management role rather than the NT's Conservation Commission. More generally, the National Parks and Wildlife Conservation Act 1975 has special application in the NT beyond that in the states (Nicholson, 1985, 706). Thus NT leverage on key tourist sites, and on what has become a vital sector of the Territory economy, is reduced both by Aboriginal title and Commonwealth intervention.

The potential for political conflict in this field can best be illustrated by the debate over Aboriginal title and Commonwealth control with respect to Ayers Rock. The NT government protested vigorously when the Commonwealth announced that title to Ayers Rock would be handed over to the Mutitjulu Land Trust. In 1983, Paul Everingham's CLP government fought a Territory election almost exclusively on the issue of the Rock, winning 19 of 25 seats with the slogan 'Stand Up for the Territory'. In 1985, as the October 26 date for the transfer of title approached, Chief Minister Ian Tuxworth went on a three week speaking tour across southern Australia to protest the transfer, a tour backed by a $200,000 media campaign. Tuxworth argued that 'Australia's most symbolic landmark will become the property of a handful of people but, even worse, its management will be dominated by people who have a proven record of incompetence - Canberra bureaucrats' (Northern Territory News, 21 May 1985). The Chief Minister also argued that the NT was being treated in a way that the Commonwealth would not dare treat state governments. Thus the Uluru debate became woven into the broader statehood debate and aspirations of the NT government.

Tuxworth unsuccessfully argued that if Aboriginal title had to be granted, Ayers Rock should remain under Territory administration and should be leased back to the NT's Conservation Commission, not to the National Parks and Wildlife Services. He declared that 'we are now resistance fighters struggling for our rights and like the Viet Cong we will battle for 40 years if that's what it takes to get Commonwealth Park rangers out' (Northern Territory News, 14 March 1983). On the same occasion, Tuxworth described Ayers Rock as 'dangling on the puppet strings of Canberra', a striking picture given the size of the Rock!

As in the case of the mining industry, the essential political conflict is for control over an important sector of the NT economy. From the perspective of the NT government, that struggle is being waged on two fronts: with the Commonwealth government, which has maintained a degree of management control unknown in the states, and with Aboriginal communities which now own the primary tourism
locations within the Territory. The stakes include the extent to which tourist sites will be developed, the manner of their development, the ownership and control of tourist facilities, and the degree of Aboriginal involvement.

D) Other Issues

The above discussion of mining and tourism illustrates, but by no means exhaustively catalogues, the conflict both real and potential between the NT government and Aboriginal communities, conflict in which competing economic interests come into play. As Warhurst (1981, 33) notes, 'the NT government clearly believes Aboriginal ownership claims do constitute a constraint on economic development and sometimes wants to portray any such claims in this light.' It should also be stressed, however, that the economic interests of the government and Aborigines are not always in conflict. As Warhurst goes on to explain (1981, 34):

It is sometimes assumed that Aboriginal ownership of resources would be inimical to development of the kind desired by the NT government but this is unlikely to be so in all instances: some Aboriginal communities do wish to take part, at least on a small scale, and are already doing so. Moreover, there is no evidence that successful Aboriginal claims to ownership of already well-known attractions would interfere with established tourism. Nor should it be forgotten that royalty payments to Aboriginal communities and any income Aborigines might get from either ownership or employment in tourist, fishing, mining and other industries would flow back almost immediately into the Northern Territory economy.

In many cases, disagreement between the NT government and Aborigines may be as much about who makes decisions as the decision itself. At issue is control over the pace and direction of economic development rather than the desirability of such development.

Economic interests have played a less direct although still important role in a number of other issues in which the NT government and Aboriginal communities have come into conflict. Two examples are provided by the extension of town boundaries and excisions from pastoral leases.

On three occasions the NT government has moved to extend town boundaries in order to frustrate Aboriginal land claims. Under the terms of the Land Rights Act, Aborigines can claim only unalienated Crown land. Land falling within town boundaries cannot be claimed, and thus the extension of town boundaries was seen as a vehicle through which land
claims could be thwarted. The town boundaries of Katherine were changed to increase the size of the town from 39 to 650 square kilometers, bringing into the town much of the Jawoyn land claim. The boundaries of Darwin were expanded to increase the town's size from 124 square kilometers to 4,350 square kilometers, an area three times the size of Greater London and encompassing the Kenbi land claim. In Tennant Creek, the town area was expanded from 22 square kilometers to 220 square kilometers, ostensibly to accommodate an expected population increase from 3,500 to over a million residents (Mowbray 1986, 40-41) and in fact temporarily blocking the Warumungu land claim. In the Tennant Creek area the NT government also threatened to alienate large tracts of land, including claimed land, to the NT Development Land Corporation. Although in all three cases the NT action was overturned on appeal to the Courts, the legacy has been increased animosity between the government and the Aboriginal community.

An emerging and potentially highly contentious issue concerns excisions from pastoral properties for Aboriginal living areas. At the present time 2,500 to 6000 NT Aborigines live on pastoral property to which they do not hold legal title (Land Rights News August 1985). Although claims for excisions to pastoral leases are not covered by the Land Rights Act, the Northern Land Council nonetheless estimates that about 100 Aboriginal groups are seeking approximately 3000 square kilometers in excisions from pastoral leases and stock routes (Land Rights News August 1985). Such excisions would provide legal title to living areas and, in turn, would provide the foundation for government funding and improved living conditions. Although the NT government has drawn up guidelines for excising pastoral leases, the issue is far from resolved. (It is now, April 1988, on the point of resolution.)

Some fear has also been expressed about more general Aboriginal land claims against the 738,000 square kilometers of the NT held under pastoral leases by 240 graziers. Note, for example, a recent article in the Northern Territory News by Frank Alcorta (8 May 1987):

As of last year, 11 properties ... representing an area of 43,309 sq km, have been bought by Aborigines and claimed under inalienable title. Three ... have already been granted. The rest are scheduled for hearings. Quite clearly the emphasis on land rights is set to shift from mining to pastoral properties. As the NT Mines and Energy Minister, Mr. Barry Coulter, says: 'That's the other half of the Territory just waiting to go under.'
In part the fear here stems from the precarious nature of the cattle industry in the Territory, and from the concern that Aboriginal cattle operations, often on marginal land or land poorly managed in the past, may go under in an industry where even some of the biggest cattle stations are marginal operations.

Conclusions

The time when Aborigines in the Northern Territory were acquiring land rights and, through those rights, were attaining greater control over their own lives, was also the time when the Territory as a whole achieved responsible government and embarked upon the road towards statehood. It is not surprising, then, that the concurrent moves for greater Aboriginal control and greater Territory control should become entangled and, at least to a degree, come into conflict. Indeed, conflict was inevitable since so much of the Territory is Aboriginal land or has come under Aboriginal claim, even though in most cases the land in question is of marginal economic value at best. Given the importance of Aboriginal land to key sectors of the NT economy, the NT government sought greater policy leverage on that land in order to meet its economic development goals. From the perspective of the NT government, Territorial control of economic development required some dilution of Aboriginal control over Aboriginal land.

Throughout this time the primary legislation with respect to Aboriginal land - the Aboriginal Land Rights (Northern Territory) Act 1976 - was Commonwealth legislation. Despite the achievement of self-government in 1978, the NT Legislative Assembly still lacked final control over more than a third, and potentially close to 50 per cent, of the Territory land mass. What emerged, then, was an ongoing struggle between the Commonwealth and NT governments with the NT government attempting to bring Aboriginal land rights legislation under the control of the NT Legislative Assembly. The achievement of statehood came to be seen, among other things, as the lever through which such control might be wrested from the Commonwealth government.

NT Aborigines were by no means disinterested spectators in this contest. Given the record of the Legislative Assembly in Aboriginal affairs, and in particular with respect to land matters, they were well aware that where policy was made could have a decisive influence on the character of that policy. Thus Aborigines defended the primacy of Commonwealth legislation. This is not to say, of course, that Aborigines always found themselves at odds with the NT government, or that the legislative record of the NT Legislative Assembly was uniformly negative with respect to
Aboriginal affairs. It is simply to recognize that in the pursuit of economic development, the NT government inevitably found itself entangled in Aboriginal affairs and the Aboriginal control of Aboriginal land. Aboriginal control of Aboriginal land and Territorian control over economic development were bound to collide.

As was stressed above, the conflicting aspirations of Aborigines and other sectors of the Territory should not be a matter of surprise. Conflict is inherent in the political process as legitimately conflicting interests will always exist. What is of concern is the process through which political conflicts are resolved. Is that process within the Northern Territory one that adequately represents Aboriginal interests? More to the point, how will statehood affect the political process within the NT? Will the representation of Aboriginal interests be enhanced or crippled? Will Aboriginal people find a place within the political structures of a new state government, or will they seek political protection through continued intervention by the Commonwealth?

In the early 1980s, Loveday and Summers (1981, 99) wrote that 'Aboriginal leaders understand that like other groups in a democracy they must compromise in politics; what seems to arouse their anger and intransigence is the recognition that when the chips are down they are forced to compromise from a position of weakness.' The question to be posed, then, is whether the achievement of statehood for the NT will enhance or weaken the bargaining position of Aborigines within the Territory. It is to that question that we now turn.
CHAPTER THREE

THE IMPACT OF STATEHOOD ON ABORIGINAL AFFAIRS

Introduction

The constitutional history of the Northern Territory has been discussed extensively elsewhere (Heatley 1979; Jaensch 1979; Nicholson 1985; Sawer 1981) and will not be reviewed here. Nor will the chapter discuss the pros and cons of statehood. On 26 August 1986, the NT government released a ministerial statement, Towards Statehood, which presents a clear and comprehensive summary of the advantages which might accrue to the Territory with statehood, and the constitutional disadvantages under which the Territory presently operates. The statehood debate was also given full exposure at the October 1986 Darwin conference of the Law Society of the Northern Territory (Loveday and McNab 1988). Taken together, the ministerial statement and conference proceedings provide a ready point of reference for the broader debate which need not be replicated here.

This chapter is limited to a discussion of the impact of statehood on Aboriginal affairs; it examines those aspects of Aboriginal affairs which are likely to be most directly affected by statehood, Aboriginal perceptions of statehood, and the basic strategic choice which Aborigines face with respect to statehood.

Underlying the chapter is the assumption that political institutions count, that the way in which we structure political life has an important bearing on the kinds of political decisions that are made, on the values and interests which are brought into play in the political process. As Wilenski (1983, 94) has written about the broader issue of constitutional change in Australia, "constitutional arrangements are not value free; they structure the political process by establishing the "rules of the game" and thus inevitably favour some interests against others, some parties against others, some policies against others." In the case of the NT, the same conclusions hold. Statehood will alter the rules of the game; it will favour some interests against others, some parties against others, some policies against others.

This chapter examines how statehood will alter the rules with respect to Aboriginal interests, players and policies. While in many walks of life statehood will not have dramatic or even noticeable effects, this is not the case with respect to Aboriginal affairs where statehood has the potential to restructure an important set of political relationships.
Constitutional Status of the Northern Territory

The Northern Territory (Self-Government) Act 1978 moved the NT a long way towards a constitutional status equivalent to that of the six existing states. As Gerritsen and Jaensch (1986, 140) explain, 'powers were progressively transferred from the Commonwealth and by 1983 the Territory government had state-like functions, excluding authority over uranium mining and some aspects of Aboriginal affairs' (emphasis added). In the Australian political science literature there is a growing tendency to refer to the NT as a quasi-state or demi-state (Gerritsen and Jaensch, 1986, 139). Increasingly, and not always with the precision one might like, general discussions of the Australian states are taken to include the NT. In intergovernmental fiscal relations, the Commonwealth government has decided to treat the Territory as a state from 1988 onwards. (The political fallout from this decision is discussed below.) When Treasurer Paul Keating first announced this move, he said that the new fiscal arrangements should be seen as 'part of the Territory's transition to Statehood' (Northern Territory News 30 May 1985).

At the present time, however, the Territory does not yet enjoy a constitutional position fully equivalent to that of the existing states. The Self-Government Act is an ordinary statute lacking constitutional entrenchment. As Heatley (1979, 49-50) explains, the Territory's Legislative Assembly is a subordinate legislative body, 'created by the federal parliament and ipso facto able to be amended or abolished by parliament'. The Commonwealth 'did not vacate the law-making field in favour of the Territory legislature and it was not restricted, in a legal sense, in its ability to legislate on local [Territory] affairs'.

The 1979 Memorandum of Understanding between the Commonwealth and NT governments, which spelled out the fiscal implications of self-government, has even less formal status. As John Reeves, Labor MHR for the Territory from 1983 to 1985, explains (1985, 29):

the sad fact is that the Memorandum of Understanding is no more than a memo passing between the Fraser LCP government and the Everingham CLP government setting out a political understanding they reached - probably over a bottle of scotch in the 'lodge'. It contains no term or period during which it will operate. It has not been supported by legislation. It is not a legally binding or enforceable agreement. It is no more than a political agreement between two governments of a similar political persuasion. It has none of the constitutional, legislative and
legal backing that the various Commonwealth/State financial agreements have.

Perhaps as a consequence, the Memorandum has increasingly gone by the board in recent years as the above-mentioned decision by Treasurer Keating demonstrates. Indeed, R.C. Madden, Under Treasurer for the NT government, argued in a 1985 speech to a CLP Conference on Statehood that the Memorandum's special arrangements reflecting the Territory's special circumstances had diminished to the point that the NT's financial arrangements with the Commonwealth 'largely mirror those of the States' (1985, 1).

In its 1986 ministerial statement, Towards Statehood, the NT government presents a detailed list of the ways in which the Territory's constitutional status differs from that of the states, and of the disadvantages that the NT faces as a consequence. For example, the list includes the fact that the Territory has only two Senate seats compared to twelve for the states, that is has only observer status at the Loan Council, that the Commonwealth Parliament has retained the power to disallow legislation passed by the Territory's Legislative Assembly, that the Territory is not counted for the purpose of determining whether a majority of states is gained for a referendum proposal, and that the Territory lacks legislative power with respect to industrial law and industrial disputes.

Of particular concern to the present analysis are the ways in which the constitutional status of the Territory differs from that of the states with respect to Aboriginal affairs. To date, the Commonwealth has not legislated with respect to Aboriginal land rights in the states, although it proposed doing so with the National Land Rights Model and could do so in the future providing that it pays just compensation for any acquisition of property. As the NT Ministerial Statement (1986, 21) points out, however:

The Commonwealth has specifically legislated on this topic for the Northern Territory in the Aboriginal Land Rights (Northern Territory) Act and does not pay the Territory compensation for any Territory land granted as Aboriginal land under it. Further, payments equivalent to royalties for minerals on Aboriginal land are applied by the Commonwealth for the benefit of Aboriginal people in accordance with the Act.

Territory laws only run on Aboriginal land in so far as they can do so consistently with this Act, and the Legislative Assembly cannot legislate inconsistently with this Act.
The 1978 grant of self-government was thus subject to the conditions of the Land Rights Act. These restrictions, incidentally, follow historical precedent. In the Commonwealth legislation creating the Territory's Legislative Council in 1947, the Administrator for the Territory was not empowered to assent to '... any Ordinance dealing with the granting or disposal of Crown lands or relating to aboriginals or aboriginal labour' (Ward 1963A, 36). The Northern Territory (Administration) Act 1959 maintained this pattern; any ordinance dealing with the disposal of Crown lands or affecting Aboriginals was to be reserved for the Governor-General's pleasure (Ward 1963A, 45).

The NT Legislative Assembly also lacks powers equivalent to the states in two areas often entangled with Aboriginal affairs – uranium and national parks. With respect to uranium, the Ministerial Statement (1986, 21) notes the following contrast with the states:

The Commonwealth does not own Uranium deposits in the States nor does it legislatively control the mining. The controls it does have are mainly exercised through its powers over exports.

The Commonwealth owns the Uranium deposits in the Northern Territory. It has the capacity to control the mining of Uranium in the Territory via the Atomic Energy Act and has exercised this on one occasion – Ranger. Commonwealth approval is also required for anything done by the Territory under the Mining Act as to Uranium. The Commonwealth receives the royalties for Uranium mining in the Territory although it makes a partial reimbursement to the Territory.

With respect to national parks, the Commonwealth does not own or control parks in the States but has 'unlimited powers' to own and control national parks in the NT (1986, 21). Kakadu and Uluru National Parks were established under the National Parks and Wildlife Conservation Act, which vested title in them with the Director of National Parks and Wildlife without compensation to the Territory.

It should be noted here that the Commonwealth has not intervened in Territory affairs to the full extent of its constitutional powers. Nevertheless, as Gerritsen and Jaensch (1986, 153) point out, the fact that the Commonwealth could intervene '... has proven a constant temptation to contending interests in Territory politics'. Groups which have disagreed with the NT government, and in particular Aboriginal and environmentalist groups, '... continually appeal for federal intervention.' It is the
potential for such intervention as much as its actuality that offends the NT government.

The Meaning of Statehood

Statehood would reduce although not eliminate the ability of the Commonwealth to intervene in Territory affairs. While the Territory would still be exposed to political and fiscal pressure from Canberra, as are the existing state governments, it would have more effective constitutional, political and legal means of self defence. In the words of Chief Minister Hatton, statehood would also mean '... the achievement of full constitutional, political and democratic rights for the citizens of the Northern Territory' (1986, 1). In short, statehood would mean equality; equality with other Australians for Territorians and equality with the existing states for the NT government. Equality would mean a constitutional status for the NT equivalent to that of the existing states, including equal representation in the Senate. Here, though, there seems to be some room for manoeuvre, at least with respect to timing. Note, for example, the discussion of Senate representation in the Ministerial Statement (1986, 5):

In the case of the Senate, the 'States' house, the Territory is entitled to equal representation. No relationship between Senate representation and population size will be accepted .... Our claim to equality is unequivocal, incontestable and will not be compromised.

However, we recognize as a matter of political reality, that the achievement of immediate parity will not be easy .... If we are forced to concede immediate equality, we will insist upon eventual equality based upon an unadorned and legally-binding formula which includes a reasonable initial representation and a short time-frame to achieve equal numbers.

Finally, and most importantly for the present discussion, equality would mean that the NT government would control 'all legitimate State-type functions' (Ministerial Statement, 1986, 5). This would mean the patriation of legislative control over Aboriginal land rights, uranium mining and national parks. Here the NT government is emphatic (1986, 4),

Control of land is fundamental .... The new State lays claim to title of all land related to State type purposes in the Territory including land presently held by the Commonwealth or Commonwealth authorities.
The transfer of the Land Rights Act - to the responsible people of the Northern Territory who are directly affected by its operation and away from those people who are remote from the Territory and for whom the issues are often of mere ideological and academic concern - is imperative.

In terms of the model developed in Chapter One, statehood would entail significant movement along both the autonomy and scope axes. Autonomy would be increased in that the ability of the Commonwealth to intervene in Territorial affairs would be constitutionally restricted; the Commonwealth's powers in this respect would be no greater than its powers to intervene in the existing states. The scope of the NT Legislative Assembly would be expanded with respect to land rights, uranium mining and national parks.

In essence, statehood as envisaged by the NT government would mean the complete integration of the NT into the existing constitutional, institutional and fiscal arrangements of the Australian federal state. As Figure 3.1 illustrates, the Territory would be drawn into the federation on terms equivalent to those enjoyed by the existing states. Anything short of equivalent terms, any form of limited statehood, would mean that the circle in Figure 3.1 would not be closed, that the wedge in the figure representing the NT would not completely fit. In an evolutionary fashion, of course, the integration of the NT into the broader Australian federal state has been taking place since the achievement of responsible government in 1978; statehood would simply bring the process to a tidy conclusion.

As the NT moves along the evolutionary path towards statehood, it carries with it a significant Aboriginal population. What remains to be seen is whether the achievement of statehood will also coincide with the effective integration of the Territory's Aboriginal population into the political structures of the new state, and into the institutional structures of the Australian federal system more broadly defined. With reference to Figure 3.1, will the circle be closed around the Aboriginal as well as the non-Aboriginal population? Or will the achievement of statehood coincide with the continued and perhaps even exacerbated political marginalisation of the Aboriginal population?

Caveats on Statehood

At least since 1947, when a partially elected Legislative Council was created, the political evolution of the
Figure 3.1: The Evolution of Statehood (Not drawn to scale)
Territory has been towards more complete integration into the Australian federal system. Thus it makes sense to speak of an evolutionary movement towards statehood. There are, however, a number of caveats that should be expressed concerning the endpoint of that evolutionary process, caveats of some relevance to the analysis of statehood's impact on Aboriginal affairs. As will be discussed below, it is not certain that the NT will attain a form of statehood identical to that enjoyed by the other states, although this is clearly the form envisaged by the NT government. It is also not clear when statehood might be attained.

In the 1975 Commonwealth election, Prime Minister Malcolm Fraser promised full statehood for the Territory within five years (Jaensch 1979, 43). However, with the inauguration of responsible government in 1978, statehood slid down the Territory's political agenda and off the Commonwealth's. It did not achieve any great prominence in the Territory until the 1985 Premiers' Conference when Federal Treasurer Keating announced that from 1988 on the NT would be treated as a state for funding purposes. With the special funding arrangements embedded in the Memorandum of Understanding coming under attack, statehood took on new appeal. As Chief Minister Ian Tuxworth declared at the time (Trollope 1986, 167), 'if the Northern Territory is to be funded as a state then at the same time it should gain control over land, national parks and uranium mining'. In the 1985 election, statehood reemerged as a major issue on the Territory's political agenda (Trollope 1986, 166).

While the NT government may have seen statehood as the logical response to changes in the financial arrangements introduced by the Commonwealth government, Territorians at large seemed less convinced about the merits of statehood. In public opinion surveys conducted before the Keating announcement, in 1982 (Jaensch and Loveday 1982) and 1983 (Loveday and Jaensch 1984), there was little evidence that statehood was a matter of any great concern. Only 0.3 per cent of the 1982 respondents and 2.1 per cent of the 1983 respondents mentioned statehood as one 'of the most important problems that the NT Government should do something about.' In a mailed survey conducted by the North Australia Research Unit in March, 1987, there were still only 76 of 1,185 respondents (6.4 per cent) who mentioned statehood as one 'of the most important problems that the NT government should do something about.' Only 25 respondents mentioned statehood as their first problem, with another 18 mentioning it second and 33 mentioning it third.

Statehood thus remains a matter of relatively low priority for most Territorians. More importantly, when
pressed on the subject, only a minority appears to support statehood. In a survey conducted in November, 1985, three months after the Tuxworth government announced that it would be pursuing statehood, only 38 per cent of Territorians surveyed felt statehood was a 'good thing'; 35 per cent believed it was a 'bad thing', and 27 per cent were indifferent or had no opinion on the subject (Andrews 1986, 99). In the 1987 NARU survey, respondents were asked the following question: 'Do you believe the Northern Territory should become a State?' Of the 1,185 Territorians polled, only 41.7 per cent said yes with 53.2 per cent saying no; 4.6 per cent had no opinion while six respondents said yes, but not yet. However, in a small pre-election survey of over 300 Territorians conducted in June 1987, and for which methodological information is sparse, 55 per cent agreed and only 41 per cent disagreed that 'the Northern Territory should become a State and have its own State Government' (Times on Sunday 21 June 1987).

Writing more than 20 years ago, Ward argued that the historical push for greater self-government was very much a bottom-up movement, that increased powers came '... from pressures exerted by the people of the Territory, and not as a result of spontaneous activity on the part of the Commonwealth or external pressures put on it' (1963, 18). At the present time, however, there is little evidence of any sustained bottom-up pressure for statehood. The NT government appears to be leading rather than following public opinion in this respect and, unlike the situation described by Ward, 'spontaneous activity' by the Commonwealth plays an important role, as Mr. Keating’s 1985 announcement demonstrates.

At this point, the Territory appears to lack an underlying public consensus on the statehood issue. As Jaensch argues (1986, 20), moreover, such a consensus will not be an easy to develop:

Mutual agreement is unlikely to be reached on the question of Uluru and Kakadu among mining interests, conservationists, the Land Councils, traditional owners, Federal Labor government, and the CLP, to mention some of the interests with concerns in the impact of statehood on this one issue. Uranium mining, and land rights, include all these interests and more. Given recent history, not all interests can, or will, be mutually satisfied. Further, some of the interests are mutually exclusive.

In short, fashioning a Territory consensus on statehood, particularly one spanning the Aboriginal and non-Aboriginal populations, will not be an easy political task.
In large part public opposition to statehood has stemmed from fears about its financial cost. Thus, for example, Gerritsen and Jaensch (1986, 153) discuss the fear '... that full statehood would bring for the Territory government not only the prerogatives of a state government but its concomitant duties, thereby ending the extraordinarily favourable financial arrangements under which the Territory operates.' For its part, the NT government has stressed repeatedly in recent years that statehood will not increase the financial burden faced by NT taxpayers. In August 1986, Chief Minister Hatton (NT,1986, 5) stated that 'there will be no - I repeat no - financial cost to Territorians'. Indeed, the NT government argues that in financial terms, the NT will be treated by the Commonwealth government as if it were a state in any event. Thus the choice is between the financial burdens of statehood without the concomitant control over land and resources, or those same burdens with the control that statehood would bring. This argument was supported by Reeves (1985, 33) in his discussion of the impending financial crisis facing the NT should the Commonwealth alter the financial arrangements set forth in the Memorandum of Understanding:

If, as a result of this crisis we end up being treated as a state financially, we have little to lose and much to gain by a move to statehood. Indeed we should accept that self government is really only a half way house and the sooner we establish our future constitutional course the better. Only then will we have a relationship of equals with Canberra. Only then will we truly control our own affairs.

This financial argument is not one that can be, or need be, assessed in any great detail here. Rather the point to stress is that, to date, the NT government's position has not carried the field because considerable public scepticism remains concerning the financial cost and viability of statehood. In the 1987 NARU survey, for example, 77 per cent agreed and only 20 per cent disagreed that 'Statehood will cost Territorians more in taxes and charges'. There is not, perhaps as a consequence, an irresistible groundswell of public support for statehood. This in turn means that there is likely to be a reasonable period of time in which the impact of statehood on Aboriginal interests can be more fully assessed, and in which an Aboriginal response to the statehood initiative can be mapped out.

Nonetheless, over the long run Territorians tend to see statehood as inevitable. As Reece and Coltheart note (1981, 10), there has always been a presumption 'that progress towards political autonomy is desirable and inevitable.'
Here Sawyer (1981, 92) argues that the intention of the 1978 Self-Government Act was that 'the Territory should be considered as an incipient new state rather than a precocious Territory.' Kilgariff (1985, 1) supports this interpretation, arguing that 'when self-government was conferred upon the Northern Territory on 1 July 1978, the move was seen as one which would be the first along the road to eventual Statehood for the Territory.' The Northern Territory News (1 May 1985) has described self-government as an incubation stage, an interim move to statehood. Thus one finds slogans such as 'towards statehood', 'the march to statehood' and 'on the road to destiny'.

The implication for Aboriginal people in the NT is that the historical momentum is indeed towards statehood, although that momentum may be accelerated or retarded by partisan, ideological or programmatic changes in Canberra. If Aborigines want to affect the form that statehood might take and/or the institutional arrangements through which Aborigines might interface with the new state government, the time to act is rapidly approaching. Action, however, requires a firm understanding of just how statehood may affect Aboriginal interests.

Relevance of Statehood for Aboriginal Affairs

The 1967 referendum marked an important turning point for Aboriginal affairs in Australia. Prior to 1967, the Commonwealth government had been constitutionally precluded from developing any special legislative relationship with Aboriginal peoples living in the six states. The amendment to s. 51 of the Constitution, however, gave the Commonwealth concurrent albeit not exclusive power to legislate with respect to Aboriginal affairs. Gradually the Commonwealth's powers under s. 51 have been broadened by the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975, the Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978, and the Aboriginal and Torres Strait Islanders Heritage (Interim Protection) Act 1984, and by High Court decisions in the Koowarta v. Bjelke-Petersen and Others (1982) and Commonwealth v. Tasmania (1983) cases.

The 1967 constitutional amendment did not lead to a sudden flood of Commonwealth legislative activity. Indeed, Commonwealth activity continued to be largely restricted to the Northern Territory. As Morse (1984, 24-5) explains:

the approach for over a decade was to establish special programs or services for the original inhabitants through the Department of Aboriginal Affairs or newly created commissions. Federal
legislation in this field was restricted to the Northern Territory, where the Commonwealth could safely act without incurring the wrath of state governments which might view general federal Aboriginal legislation as an invasion of state jurisdiction.

However, under the Aboriginal Affairs (Arrangements with the States) Act 1973 the Commonwealth was able to arrange with individual states to administer programs which were under the aegis of state governments. This arrangement, which was acceptable to most states, provided an expanded federal presence in Aboriginal affairs.

In 1976 the Commonwealth took a major step with the passage of the Land Rights Act, although the Act did recognize and retain a substantial Territory role in Aboriginal land matters. Moreover, the NT government was charged with the responsibility for providing essential services for Aboriginal communities. Laws enacted by the NT Legislative Assembly would apply to both Aboriginal and non-Aboriginal land with respect to such matters as the control of stock disease, soil erosion, bush fires and noxious weeds. The Act also gave the NT power to legislate with respect to entry onto Aboriginal land and seas adjoining Aboriginal land, the protection of sacred sites, and the conservation of wildlife on Aboriginal land. However, while NT legislation was to apply to mineral exploration and mining on Aboriginal land (apart from uranium), minerals on Aboriginal land remained the property of the federal Crown. More importantly, the Act provided that mineral exploration and mining on Aboriginal land would only be permitted with the consent of the Minister of Aboriginal Affairs and the relevant Land Council, unless the Commonwealth decided that exploration and/or mining was required in the national interest.

Two years later, the grant of responsible self-government to the Territory was not extended to the legislative domain of the Land Rights Act. As Reece and Coltheart (1981, 8) note, Parliamentary debate on the Self-Government Act recognized the threat that NT control of Aboriginal affairs might pose to Aboriginal interests:

The former Minister for Aboriginal Affairs (G. Bryant) believed that the Northern Territory Assembly's record in Aboriginal affairs was almost as 'unhappy' as that of Queensland and that it should not be permitted to have any additional authority in the area. The only real security he saw for Aborigines was for the federal government to take over land by legislation or
purchase and to deed it in perpetuity to Aboriginal groups.

Thus the Self-Government Act conferred limited powers on the NT Legislative Assembly, powers limited by the restrictions of the Land Rights Act. However, there was nothing in the Self-Government Act which would prevent control over Aboriginal land being delegated to the NT government at some later time and by some later government.

On 8 December 1983, the federal Minister for Aboriginal Affairs, Clyde Holding, delivered a speech in Parliament strongly supporting Commonwealth pre-eminence in Aboriginal affairs. Stating somewhat inaccurately that the states' legislative powers with respect to Aboriginal affairs passed to the Commonwealth in 1967, Holding argued that 'the human rights of Aboriginal and Islander Australians must take precedence over State rights', a doctrine true to the spirit of the Self-Government Act. (Understandably, the assumption that human rights are better protected by the Commonwealth than they are by the States, an assumption very much in line with the American theorist James Madison, did not sit well with the NT government in Darwin.) Yet despite Holding's views, there is no constitutional guarantee that Aboriginal land rights will remain under the legislative umbrella of the Commonwealth. The Land Rights Act could be patriated prior to, in conjunction with, or subsequent to statehood. Indeed, patriation need not be tied to statehood in any way; it could independently precede statehood and thus simplify the statehood debate. The Act remains with the Commonwealth because it is the will of the incumbent government that it do so. Should that will change, or should the government change, the Act can be patriated. At the same time, statehood for the NT would not require that the Act be patriated. There is simply no clear constitutional guidance or dictate on the matter; it is a political rather than a constitutional question.

There is little evidence that in the event of statehood, the NT government would want to assume total responsibility for Aboriginal affairs. In writing about Aboriginal affairs in the Territory during the late 1970s, Heatley (1979, 156) maintained that 'the immensity of the task that lies ahead will be beyond the resources of the Territory, even if it attains statehood, and prime responsibility for Aboriginal affairs will remain with the Commonwealth.' This sentiment is reflected in the recent Ministerial Statement (1986, 29):

The Territory is in a unique position in respect of the services it provides to Aboriginal people. By comparison, Aboriginais form a far larger proportion of the Territory's population relative
to the States and their needs are frequently greater. It is likely that the level of need will continue to grow at a rate which is greater than the growth in capacity.

The government goes on to express satisfaction with the Memorandum of Understanding's position that 'responsibility for policy planning and co-ordination of Aboriginal affairs will remain with the Commonwealth government'; the concern of the NT government lies primarily with securing adequate levels of funding to meet its own programmatic responsibilities in Aboriginal affairs. However, this willingness to leave Aboriginal affairs in Commonwealth hands does not apply to the control of Aboriginal land and Aboriginal land rights.

A) Aboriginal Land Rights

As discussed above, the NT government's vision of statehood includes either patriation of the Land Rights Act, with land rights being administered through NT state law, or new federal legislation which would be uniformly applicable to all states, including the new state government in the Territory. While there is little doubt that the first option is preferred, the second option at least has the benefit of eliminating what is seen to be discriminatory treatment of the NT. Moreover, as recent experience with the proposed National Land Rights Model has shown, there is little doubt that federal legislation applicable to all states would provide much weaker or at least more flexible protection for Aboriginal land rights than the present Act provides.

Greater control over land is sought so that the NT government can exercise more effective leverage on economic development. As Madden (1985, 14) argued in his presentation to the CLP Statehood Conference, Commonwealth control '... has prevented the Territory from deciding for itself how to make best economic use of its land.' With patriation of the Land Rights Act, the NT government would be in a position to encourage more vigorously mining and tourism development, in part by encouraging support for such development within segments of the Aboriginal community. By stimulating economic development, patriation would also generate increased revenue for the NT government and thereby reduce its fiscal dependency on the Commonwealth. As Kilgariff notes (1985, 9), 'the connection between more income from uranium mining and Statehood, is seen as being in the transfer of powers over Aboriginal land rights to the Territory, thereby paving the way for alterations to the present provisions which amount to a virtual veto on mining of any minerals, uranium
included.' Here Madden (1985, 13) argues that the money the NT currently receives in lieu of royalties on uranium '...is significantly less than the royalties which could be received if the mineral ownership was vested in the Territory, and if uranium was taxed at a level comparable to other minerals.' Thus government revenues would expand both from growth in uranium mining and from higher levels of taxation. Patriation of the Act, however, or substantial modification of the Act by the Commonwealth, remains the first and essential step before this development scenario can unfold.

The details of how Aboriginal land rights might be affected by statehood have yet to be determined, and the NT government is committed to extensive negotiations with NT Aboriginals before this aspect of the statehood package can be put into place. (For a discussion see Towards Statehood, Land Matters Upon Statehood November 1986.) However, given the past hostility of the NT government to land claims, its protests over the manner in which land rights have impeded mineral exploration, and its more general commitment to economic development, it is unlikely that the government would accept anything less than the elimination of the Aboriginal veto on mineral exploration. The NT government would also like to build in some options to inalienable freehold title for Aboriginal land, as the Ministerial Statement suggests (1986, 4):

Patriated land rights would provide existing ownership guarantees. As a result of full consultation, it might also make provision for alternative tenure arrangements and provide flexibility which will enable traditional owners to have real control of their land with the ability to decide whether to exploit its economic potential consistent with their cultural values.

More flexible tenure arrangements can be seen as a way of circumventing the land councils and what is seen as their obstructionist orientation to economic development, an orientation which may not be shared by all traditional owners.

B) Non-Aboriginal Public Opinion

As noted above, public opinion surveys suggest that the NT government is running ahead of public opinion on the statehood issue; Territorians are less supportive of statehood than is their government. However, with respect to the form that statehood should take if it occurs, there
is a much closer fit between public and governmental preferences. The evidence here comes from the March 1987 NARU survey of 1,185 Territorians.

Regardless of whether they thought statehood was desirable or not, respondents were asked a number of questions about the form statehood should take. The major findings are as follows:

- when asked if land rights for Aborigines should be guaranteed before statehood, only 26 per cent said yes while 66 per cent said no.

- 71 per cent said that land rights for Aborigines should be controlled by the NT, with only 24 per cent preferring Commonwealth control.

- 74 per cent said that National Parks should be controlled by the NT, with only 23 per cent preferring Commonwealth control.

- 68 per cent preferred NT control of uranium mining, while 28 per cent preferred Commonwealth control.

In these respects, respondents share a common vision of statehood with the NT government. It should be stressed, however, that these survey results do not include Aboriginal respondents. (Aboriginal survey data are discussed below.) It should also be stressed that a preference for NT control of Aboriginal land rights does not necessarily imply a desire to weaken or restrain those rights, although this linkage may exist in some and perhaps even many cases.

C) Senate Representation

One of the most contentious issues in the statehood debate is the number of Senators to which the new NT state would be entitled. The position of the NT government on this matter is clear; the NT should receive more than the present two Senators when statehood is inaugurated and there should be an agreed-upon formula which would increase the Territory's Senate representation to 12 members over a reasonably short period of time, a formula not pegged to the growth of the Territory's population. The time frame is negotiable, while the endpoint of 12 Senators - equal representation with the other states - is not.

Whether or not the NT will be successful in convincing the Commonwealth and the other states in this respect is not an issue that need concern us here. (For a discussion of the constitutional aspects of this matter, see Tappere, 1987,
There are, however, two aspects of the Senate debate which are relevant to the Aboriginal stake in statehood. The first is that the more Senate seats the NT obtains, the easier it would be for Aboriginal voters to elect Aboriginal Senators. For example, if the NT had 12 Senators the quota needed to elect a Senator would be only 14.3 per cent or 7.7 per cent in the case of a double dissolution. These figures are well within range of a group comprising close to 20 per cent of the electorate, although it is by no means certain that Aborigines would vote en masse for Aboriginal candidates. (The prospects for successful bloc voting will be discussed in Chapter Four.) If the NT had ten Senators, the quotas would increase to 16.7 per cent and 9.1 per cent respectively; with eight Senators they would be 20 per cent and 11.1 per cent; with six Senators they would be 25 per cent and 14.3 per cent; and with four Senators, the quotas would be 33 per cent and 20 per cent respectively. It would appear, then, that any increase in the number of NT Senators increases the chances of Aboriginal representation within the Australian Senate.

However, for Aborigines there may also be a downside to an increase in the NT's Senate representation. The possibility although by no means the certainty exists that the majority of NT Senators may inject more opposition than support for Aboriginal interests into the national Parliament. They may help tip the ideological balance within the Senate so that supportive Commonwealth policies with respect to Aboriginal issues become more difficult to achieve. How much of a threat this might actually pose would depend in part on where the final legislative control over Aboriginal land rights had come to rest after statehood was achieved for the NT. If that control came to rest with the NT government, the impact of national legislation on Aboriginal interests in the NT would have been reduced in any event.

In drawing this discussion to a close, there is a final point to be made. A shift in the legislative control of Aboriginal land rights from Canberra to Darwin means more than a change in the elected politicians who will ultimately be making decisions. It also means a change in the relative power of different interest groups who may have a stake in Aboriginal interests. For example, the NT government is more exposed to political pressure from the tourism and mining industries in the NT than is the Commonwealth government. Therefore the political power of those sectors of the economy with respect to Aboriginal affairs is enhanced if legislative control moves from the national capital to the state capital. The patriation of land rights legislation to the NT changes the relative power of a variety of different actors with interests in the land rights and land claims area. Given that the political leverage of many opponents
of land rights is likely to be enhanced by statehood, it is critical to determine how statehood might affect the political power of Aborigines per se.

**Aboriginal Perceptions of Statehood**

In a recent analysis of the statehood issue in the NT, Jaensch (1986, 2) argued that some people support statehood because they hope to benefit from the removal of outside 'constraints' on their activities, while others oppose statehood because those same outside constraints protect their interests. The first category includes the NT government and a supporting cast of economic interests, while the second includes the Aboriginal land councils. Yet there is also an important third group described by Jaensch:

Some may be concerned about the uncertainty of the current debates - they simply cannot establish what statehood will mean, in detail, for them, and their specific interests. As a result, they tend to feel threatened by the proposal.

It is into this last category that the bulk of the Aboriginal population may fall, along with non-Aborigines concerned about the financial costs of statehood.

If one accepts the major thrust of the discussion in Chapter Two, it should not be surprising that Aboriginal people are wary of statehood. The NT government recognizes this wariness while at the same time rejecting the fear that statehood would be detrimental to Aboriginal land owners. As Chief Minister Hatton stated in *Towards Statehood* (1986, 6):

It would be idle to deny that relationships between the Territory Government and the organized voice of Aborigines have sometimes been less than smooth. However, it should also be recognized that, in areas other than those related to land rights, relationships have been, and continue to be, usually strong and productive.

It is important to note that the Chief Minister singles out land rights as the exception to a more positive working relationship, although this issue does lie at the heart of the statehood debate. It is also interesting to note the explicit contrast between the 'organized voice' of Aborigines - the land councils - and the Aboriginal population more broadly defined.

The organised voice of NT Aborigines has expressed deep suspicion of statehood, suspicion growing out of its
perception of the NT government's record on land rights and land claims. Examples of such suspicion, and indeed of outright hostility to statehood, are not difficult to find. Galarrwuy Yunupingu, Chairman of the Northern Land Council, argues that the past record of the NT government provides every reason to be wary, and that land rights should be left out of the statehood debate and out of the hands of the NT government: 'Statehood for us is a very tricky issue, because the NT Government cannot be trusted in its treatment of Aboriginal people and our land' (Land Rights News September, 1985). In the CLC and NLC response (mimeo, 19 May 1986) to draft amendments to the Land Rights Act, the councils rejected any enlarged role for the NT in Aboriginal affairs, arguing that 'although it only represents the equivalent of a municipal electorate, the NT is accorded major governmental status, far beyond its competence ....'

Perhaps the most emphatic statement on the issue comes from a kit prepared for the 1986 ALP Conference by the Northern Land Councils. The kit, 'Land Rights in Crisis', was prepared in response to the Commonwealth government's proposed National Land Rights Model:

Quite clearly, our rights to self-determination are on the chopping board. The Federal Labor Government is seeking to abdicate its responsibilities with regard to Aboriginal Affairs, and leave it to the State Governments.

In so doing it is according the Northern Territory Government the status of a de facto State Government, in spite of its declared intention to dismantle land rights legislation if given Statehood.

The Northern Territory Government has sought to deny and frustrate the right of Aboriginal people to claim their traditional land through the legitimate land claim process. It has used administrative means (overturned at numerous High Court hearings), in an effort to alienate formerly unalienated land; it has sought to undermine the protection of our sacred sites.

The Northern Territory Government has promoted racial tension and division in the NT for its own political purposes.

It has put every impediment in the way of Aboriginal people deriving economic benefit from developments on their lands ....
In January 1987, the Northern Land Council issued a booklet entitled Statehood. A new threat to Land Rights. The NLC argued that Aboriginal people should deal only with the Commonwealth government on land rights, and that land rights should be protected through the Australian Constitution. The states, including any new state government for the NT, should have nothing to do with land rights. The NLC opposed the extension of ordinary freehold title to Aboriginal land, an extension that was raised as an option in the government's statehood proposal (NT 1986). The booklet concluded, however, by saying that statehood could be good for Aboriginal people and their land rights if land rights were protected in the Australian Constitution. Otherwise, statehood would be 'very bad'.

Whether the land councils accurately reflect Aboriginal opinion on the statehood issue is a difficult and contentious matter to establish. There is some evidence, however, which suggests that the general Aboriginal population may be less antagonistic towards statehood than is the 'organised voice' of NT Aborigines. The evidence comes from two NARU public opinion surveys conducted in March, 1987. In the first, which has been discussed above, 1185 non-Aboriginal respondents responded to a mailed questionnaire. This survey also captured an additional 38 Aboriginal respondents who have been set aside for separate analysis. At the same time, NARU also interviewed 261 Aborigines across the NT using a similar but not identical questionnaire. The results of these three surveys are compared in Table 3.1.

On the statehood issue itself, there is little to distinguish between Aboriginal and non-Aboriginal opinion. Close to 60 per cent oppose statehood in each case, although it is also worth noting that a substantially higher proportion of Aboriginal respondents had 'no opinion' on this question than did non-Aboriginal respondents. On the questions dealing with NT or Commonwealth control with respect to Aboriginal land rights, uranium and national parks, it is clear that Aboriginal respondents are less supportive of NT control than are non-Aboriginal respondents. At the same time, the gulf between the two groups is not that large. Indeed, it is surprising to note that in the larger Aboriginal survey, a bare majority supported NT control of Aboriginal land rights.

It should be kept in mind that truly representative samples of the NT Aboriginal population are next to impossible to attain, and therefore that the NARU surveys should be used as rough estimates only. Nonetheless, the comparison in Table 3.1 suggests that, in the public at large, Aboriginal and non-Aboriginal opinions do not diverge as drastically as one might expect given the positions adopted
by the land councils. While Aborigines may be wary of statehood, wariness is not to be equated with steadfast opposition.

<table>
<thead>
<tr>
<th>Table 3.1</th>
<th>Aboriginal and Non-Aboriginal Opinion Towards Statehood</th>
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<tbody>
<tr>
<td></td>
<td>Aboriginal Interviews: N = 261 per cent</td>
</tr>
<tr>
<td>Should the NT become a state?</td>
<td>- yes 42</td>
</tr>
<tr>
<td>Which government should control Uranium?</td>
<td>- NT 58</td>
</tr>
<tr>
<td>Aboriginal Land?</td>
<td>- NT 50</td>
</tr>
<tr>
<td>National Parks?</td>
<td>- NT 58</td>
</tr>
<tr>
<td>Statehood Strategies</td>
<td></td>
</tr>
</tbody>
</table>

Tatz (1980A, 519) has argued that although Australian Aborigines do not form a homogeneous society, they do share in common an 'intrinsic powerlessness.' Within the Northern Territory, however, this characterisation is less true than it is elsewhere in Australia. NT Aborigines enjoy some real measure of power that comes from both their ownership of land and their significant demographic weight. What is not clear is through what institutions and what strategies Aboriginal political resources should be channelled.

In coming to grips with the statehood issue, Aborigines have a choice between two basic strategies. The first is to attempt to ward off the impact of statehood by trying to limit the new state's jurisdiction with respect to Aboriginal land rights. The second is to try to maximise Aboriginal political power within the new state, to push for a set of institutional arrangements which will give Aborigines sufficient power to protect their interests.
within the new political environment that statehood will produce. The first strategy is one of disengagement, the second one of engagement.

Disengagement could be pursued in one of three ways. The first, and undoubtedly the most powerful approach, would be to entrench Aboriginal land rights in the Australian Constitution. Constitutionally entrenched rights would effectively tie the hands not only of the Commonwealth government but also the NT government, be it a state or territory government. Constitutional entrenchment could take place in conjunction with a Makarrata, or treaty between Aborigines and the Commonwealth, although this would not be necessary. This is the preferred strategy of the Northern Land Council and is also undoubtedly the approach of greatest appeal to Aboriginal organisations outside the NT.

A second approach would be to limit the powers of any NT state government by retaining Commonwealth control over Aboriginal land rights. In effect, upon statehood the Land Rights Act would remain in place as Commonwealth legislation. Thus the NT would not be a state like other states, as it and it alone would lack jurisdictional control over land rights. It appears that under s.121 of the Constitution the Commonwealth could create a new state government that would not be equivalent in its powers to the existing states (Tappere 1987, 37ff), although this is a matter of major legal and constitutional dispute. It is clear, however, that such 'second class' status would be vigorously opposed by the NT government and, if the public opinion polls cited above are accurate, by Territory residents at large.

The third approach would be to have Aboriginal land rights patriated within the context of national land rights legislation applicable to all states, including the NT. This approach would be acceptable to the NT government (1986, 2), in part because it would not single out the NT for discriminatory treatment and in part because legislation acceptable to all states would inevitably be much weaker in its guarantees than is the present Land Rights Act. It is, however, an option of more limited appeal to Aborigines given their opposition to the National Land Rights Model that was endorsed by the Hawke cabinet in August 1985, before being subsequently withdrawn in March 1986. A variant of this approach would be to have a declaration of Commonwealth principles which would provide in turn a framework for state legislation on Aboriginal affairs. As Altman (1985B, 1) explains:

It is my personal belief that the idea of a National Land Rights Model should be abandoned in
favour of a broad set of principles on which land rights legislation for each State or Territory should be based. Given Federal power to legislate with respect to Aboriginal affairs in the States, Federal intervention would be required if State legislation did not comply with the spirit of Federal principles.

This approach would provide protection analogous to if somewhat weaker than constitutional entrenchment, and would be much easier to achieve.

The prospects of these three disengagement options are difficult to assess in the present analysis; to do so would require a research focus on the national political arena rather than upon the Northern Territory. The necessary information on internal cleavages within the ALP on Aboriginal affairs, on policy shifts within DAA, on the variety of views on Aboriginal affairs embedded within the opposition parties, and on ideological shifts within the Australian electorate has not been secured.

Instead, then, the remaining three chapters will focus on strategies of engagement, on strategies through which Aboriginal political power might be maximised within the new political and institutional environment that statehood will provide. More specifically, Chapter Four will examine the utility of conventional means of political participation for the pursuit of Aboriginal interests. Particular attention will be directed towards voting and political parties. Chapter Five will look at community government as a means of achieving Aboriginal self-determination, and Chapter Six will examine the future prospects of the land councils as a political voice for Aboriginal people within the Territory.
CHAPTER FOUR
ABORIGINAL ELECTORAL PARTICIPATION

Introduction

There are a variety of conventional means through which individuals can exercise some degree of influence on the political process; they can vote for candidates and parties which share their views, participate in election campaigns, join political parties, support interest groups, write letters to the editor, and even run for public office. However, such conventional means provide Australian Aborigines with little leverage on national politics in the existing states. The basic demographic reality is that in a democratic political system where numbers in fact do count, there are simply too few Aborigines to count for much in the policy decisions of parties and governments. If Aborigines possessed compensating political resources, if they were wealthy, commanded the heights of the national economy, had powerful foreign allies or a stranglehold on a key sector of the industrial labour force, then the lack of numbers might not pose a critical problem. Aborigines lack not only numbers but also most other political resources; their numerical weakness is reinforced rather than mitigated by their socio-economic position within the Australian community.

Thus writers like Tatz (1980, 281) argue that the Australian political system has little to offer Aborigines, that the rules of the game provide no leverage:

Australia's Aborigines suffer powerlessness and its imaginable consequences. As a disparate, scattered, fragmented minority - about one percent of the population - how do they raise a voice, gain a hearing, excite action and change their condition or, at least, some of their specific conditions?

Tatz maintains that Aborigines should abandon the conventional forms of political behavior discussed in this chapter, and pursue a legal strategy. Others, sharing his assessment of the existing political process, have counselled withdrawal, resignation and even separation to form a distinct political entity.

In the Northern Territory, however, Aborigines face a quite different demographic and hence political situation. While Aborigines may exercise considerable influence in specific areas of some states, such as in the Kimberley area
of Western Australia, nowhere does their state-wide influence approach that in the NT. Aborigines comprise 22 per cent of the Territory population, and exercise considerable control over a wide range of land-related economic resources. Within the Territory, therefore, conventional forms of political participation may provide significant leverage for Aborigines. Whether that leverage will be sufficient to protect Aboriginal interests and Aboriginal communities within a new NT state is the question to be addressed in this chapter. In so doing, particular although not exclusive attention will be paid to electoral participation and partisan support.

Electoral History of the Northern Territory

Since the initiation of Territory self-government in 1978, three elections have been held for the NT Legislative Assembly. In all but the most recent, Aboriginal issues played a major role. Note, for example, Heatley's account (1981, 22) of the legislative debate leading up to the 1980 election:

Although the general conduct of Aboriginal affairs remained in Commonwealth hands, several measures promoted by the Territory government provoked opposition from the ALP. Prominent among them were sections of the complementary land rights legislation, the status of public roads on Aboriginal land, the extension of local government planning boundaries into land under claim (or potentially claimable) by Aborigines, the opposition by the government to all or part of land claims, the activities of Aboriginal pressure groups, mining on Aboriginal land, and moves to facilitate the development, under Territory law, of local government and associations in Aboriginal communities. Moreover, there were frequent references to other problems peculiar to the Aboriginal population. In fact, for sheer bulk, debate on Aboriginal themes overshadowed all others.

As Heatley points out elsewhere (1985, 9), although NT election campaigns have featured a wide range of political, financial and administrative disputes, 'developmentalism has been at the core of electoral conflict.' It is largely as a consequence that Aboriginal issues have played such a major role in NT elections.

The June 1980 election was the first election held since the initiation of self-government. In the campaign, Loveday (1981, 78) notes that the CLP '... played down, almost to the point of no emphasis at all, Aboriginal
affairs and land rights.' However, Loveday goes on to argue (1981, 79) that despite the CLP's public campaign strategy, Aboriginal issues and land rights in fact played an important role:

If an 'issue' is a topic in which some alteration of existing arrangements has been proposed and has become the subject of public debate and political activity, the Aboriginal land rights issue was at least as important as the 'issues' the parties chose to emphasize... for Aborigines and for many whites the matter was of the first importance.

The December 1983 election was focussed primarily on federal-Territory issues and the defence of self-government (Heatley 1986, 237). However, many of the intergovernmental disputes and conflicts which shaped the election had an important Aboriginal dimension. In its campaign, built around the slogan 'Stand up for the Territory', the incumbent CLP government attacked federal ALP policies which were seen to be harmful to the Territory. These included delays in the construction of the Alice Springs to Darwin railway, Commonwealth failure to develop fully the tourist potential of Kakadu National Park, the decision to integrate the Cocos and Christmas Islands into the NT federal electorate, the removal of shipping subsidies, and the ALP's decision to freeze uranium development in the NT while permitting the Roxby Downs uranium development in South Australia to proceed, a decision '... which was seen as dishonestly sacrificing Territory interests to those of South Australia' (Heatley 1985, 8). The trigger for the election and the central campaign issue came from the transfer of title to Ayers Rock to traditional owners and the Rock's leaseback to the Commonwealth.

In the March 1987 NT election and in a sharp departure from the historical pattern of CLP campaigns (Gerritsen and Jaensch 1986, 154), Aboriginal issues played virtually no role in the CLP campaign. The CLP campaign emphasised the government's record of accomplishment across a broad policy domain — education, health care, support for rural industries, housing and construction, fishing, tourism, manufacturing and mining. With respect to mining, some of the traditional NT grievances discussed in Chapter Two were brought into play, as the following quotation from a CLP campaign handout illustrates:

The CLP Government will cut unnecessary regulation in the mining industry to shorten the processing time for both exploration and mining titles. The CLP will do everything in its power to prevent a Federal Labor Government locking up vital
Territory resources. We will fight for the start of Jabiluka and Koongarra uranium mines, and the responsible development of mining in Kakadu stages two and three.

Note, however, that Aboriginal land rights per se were not mentioned, even in the context of mining. The 'federal government', not Aborigines, was identified as the principal problem during a campaign in which the CLP stressed its ability to fight in the interests of all Territorians. In over 2600 words of text in the CLP's primary election handout, the sole explicit reference to Aborigines or Aboriginal affairs was the following: 'In Aboriginal housing, there will be a significant increase in funds for both urban and rural areas.' Only the nascent National party brought Aboriginal issues into the campaign with its promise to abolish the land councils and inalienable Aboriginal title.

The Role of Parties

Even the most casual observer of Australian political life will be struck by the importance of parties and party politics. As Jaensch (1983, 9-10) explains:

parties and the party system ... are the critical components in the polity. There can be no argument about the ubiquity, pervasiveness and centrality of party in Australia. The forms, processes and content of politics - executive, parliament, pressure groups, bureaucracy, issues and policy-making - are imbued with the influence of party, party rhetoric, party policy and party doctrine. Government is party government. Elections are essentially party contests, and the mechanics of electoral systems are determined by party policies and party advantages. Legislatures are party chambers. Legislators are overwhelmingly party members. The majority of electors follow their party identification. Politics in Australia are party politics.

The dominance of parties that Jaensch describes has become increasingly characteristic of political life in the NT. Prior to the creation of a fully-elected Legislative Assembly in 1974, party affiliations played a minor role next to that of candidate personality and experience (Heatley 1979, 55). With a fully-elected Assembly, however, political life came to be structured more and more around the opposing policies and organisations of the CLP and ALP. By the early 1980s a two-party system was firmly in place (Heatley 1984, 3) and its grip on Territory politics is unlikely to weaken in the years ahead. Indeed, Jaensch
(1986) argues that party politics will be central to the unfolding of the statehood debate in the NT.

To date, Aborigines in the NT and elsewhere have been marginal participants in party politics. While there is a great deal of political activity in Aboriginal communities, the interface between such activity and conventional electoral politics has been very weak historically (Loveday and Summers 1981). In part this may have been because, as Tatz (1980) and others have argued, party competition was seen by Aborigines as irrelevant to their immediate concerns. Despite such perceptions, however, parties do play an important role in shaping policies which have a direct and immediate impact on Aboriginal people. It would be difficult to argue, for example, that Commonwealth Aboriginal policy would be unaffected by a change in the national environment and by the resultant ideological changes. Certainly any electoral backlash against the Australian welfare state would bode ill for Aborigines (Wilenski 1983). It would be even more difficult to argue that it is irrelevant in the Territory whether the NT government is controlled by the CLP or the ALP, parties which diverge more markedly on Aboriginal policy than on any other policy dimension.

We can go further and argue that, given the centrality of party to Australian and Territory political life, the integration of Aborigines into party politics is a matter of central concern. While to some extent the Aboriginal political organisations for self-government discussed in the next two chapters may insulate Aboriginal communities from party politics, that insulation will not be complete. The policies of the Commonwealth and NT governments will continue to impinge upon Aboriginal communities, and those policies will continue to be shaped by party influences. While one might argue that in the national context electoral participation by Aborigines means little because Aborigines carry so little electoral weight, this is not the case in the NT. There, electoral participation provides a significant although not sufficient form of political protection for Aboriginal interests, a form that will take on increased importance if statehood shifts control of Aboriginal land rights from the Commonwealth to the NT state.

The Electoral Power of NT Aborigines

The electoral power of any group is a function of several factors; (a) the relative size of the group, (b) the degree to which the group is territorially concentrated or dispersed, (c) the group's participation rate, (d) the degree to which parties differ on matters of importance to the group, and (e) the extent to which the electoral
behavior of group members can be orchestrated by group leaders.

(a) **Group Size**

According to the 1986 census, 22.4 per cent of the Territory's population was of Aboriginal descent, a figure that may in fact be somewhat larger if census counts tend to underestimate the size of the Aboriginal population (Loveday, Jaensch and Sanders 1986, 11). NT Aborigines thus carry substantial demographic weight, and it would be rare to find an electoral system in which a group comprising nearly a quarter of the population did not have the potential to exercise considerable electoral clout. There are, however, three demographic caveats that should be mentioned.

The first is that the Aboriginal share of the Territory population has been falling over time even though in absolute terms the Aboriginal population has increased substantially. (From 1976 to 1986, the NT Aboriginal population increased from 23,751 to 34,739.) While the decline has been neither steep nor precipitous - from 1981 to 1986, it fell from 23.6 per cent to 22.4 per cent - it is unlikely to be reversed in the future. Over the long-term, economic development in the NT will likely prompt migration from other parts of Australia and abroad that will more than offset the natural increase in the Aboriginal population. The second caveat is that the Aboriginal population is younger than the non-Aboriginal population, with a higher proportion of individuals being under the age of eighteen. In the 1981 census, for example, 42.6 per cent of the Aboriginal population was under 15 years of age compared to only 25.1 per cent of the general population. Hence the Aboriginal share of the electorate is significantly less than the Aboriginal share of the population. Third, the size of the Aboriginal population as in the census depends in part on the self-identification of individuals as Aborigines. It is at least possible that, in the future, Aboriginal self-identification will decline, although it is not clear whether Aboriginality would also decline as a determinant of individual voting behavior.

(b) **Territory Distribution**

The electoral influence of any minority group depends in large part on the group's territorial distribution. If a group is concentrated within a relatively small area, it may be able to control or at least strongly influence the outcome in a number of electoral districts even though the group may constitute only a small minority within the electorate at large. If the group is more evenly dispersed across the country or state, it may form only a small
minority in every district with little electoral influence as a consequence. Certainly the odds of successfully nominating and electing minority candidates are shortened if the minority is concentrated rather than dispersed.

Table 4.1 presents the Aboriginal percentage of the total population for each of the 25 seats in the NT Legislative Assembly, based on the 1981 census. As the table shows, the Aboriginal population is concentrated in a relatively small number of constituencies. Aborigines form a clear majority in five rural seats - Arafura, Arnhem, Macdonnell, Stuart and Victoria River - constituting 20 per cent of the Legislative Assembly. They form a sizable minority - 20 to 25 per cent - in another four seats, while forming less than 10 per cent of the electorate in 13 of the 18 urban seats in the NT Legislative Assembly.

Over the long-term, population growth in the NT is likely to add more urban seats and thus reduce the proportion of seats in the Legislative Assembly which Aborigines might control. This happened in 1983 when the size of the Assembly was increased from 19 to 25 seats with the addition of six new urban seats. Given, however, that NT constituencies presently have an average population of only 6,200 people, there is unlikely to be any compelling need to increase the size of the Assembly in the near future.

Here it should also be noted that there are no seats in which Aborigines might reasonably be expected to move from a minority to a majority of the electorate. Apart from the five seats in which they already form a majority, Aborigines are not close to 50 per cent in any other seat. Thus the number of 'Aboriginal seats' in the Legislative Assembly will not increase with the passage of time, and will in fact decrease proportionately if new seats are added.

(c) Participation Rates

The last two decades have witnessed a steady growth in the rate of electoral participation by NT Aborigines. The Commonwealth and Territory franchises were not extended to NT Aborigines until 1962, a move that '... resulted less from any agitation or demand on the part of Aborigines themselves than from the conscience of Europeans, administrators and politicians who saw the measure as a vital step in the assimilation process' (Rumley 1979, 113). Unlike other Australians, however, Aborigines at the time were not required to enrol. In 1980, the ALP proposed an amendment to the new NT Electoral Act which would require compulsory enrolment for Aborigines. At first the CLP government rejected the amendment on the public grounds that '... many Aborigines did not support the move
Table 4.1
Aboriginal population in NT Legislative Assembly seats

<table>
<thead>
<tr>
<th>Seat</th>
<th>Aboriginal &amp; Total Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stuart</td>
<td>80.9</td>
</tr>
<tr>
<td>Arnhem</td>
<td>72.6</td>
</tr>
<tr>
<td>Macdonnell</td>
<td>65.5</td>
</tr>
<tr>
<td>Victoria River</td>
<td>56.4</td>
</tr>
<tr>
<td>Arafura</td>
<td>56.2</td>
</tr>
<tr>
<td>Elsey</td>
<td>25.3</td>
</tr>
<tr>
<td>Barkly</td>
<td>22.6</td>
</tr>
<tr>
<td>Flynn</td>
<td>22.3</td>
</tr>
<tr>
<td>Sadadeen</td>
<td>20.0</td>
</tr>
<tr>
<td>Nhulunbuy</td>
<td>15.4</td>
</tr>
<tr>
<td>Ludmilla</td>
<td>14.2</td>
</tr>
<tr>
<td>Araluen</td>
<td>12.2</td>
</tr>
<tr>
<td>Millner</td>
<td>9.0</td>
</tr>
<tr>
<td>Braitling</td>
<td>8.5</td>
</tr>
<tr>
<td>Jingili</td>
<td>8.5</td>
</tr>
<tr>
<td>Wanguri</td>
<td>8.2</td>
</tr>
<tr>
<td>Wagaman</td>
<td>7.7</td>
</tr>
<tr>
<td>Leanyer</td>
<td>7.2</td>
</tr>
<tr>
<td>Sanderson</td>
<td>7.2</td>
</tr>
<tr>
<td>Berrimah</td>
<td>7.0</td>
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<tr>
<td>Koolpinyah</td>
<td>6.7</td>
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<tr>
<td>Casuarina</td>
<td>5.3</td>
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<tr>
<td>Fannie Bay</td>
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<tr>
<td>Nightcliff</td>
<td>3.7</td>
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<tr>
<td>Port Darwin</td>
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<tr>
<td>Northern Territory</td>
<td>23.7</td>
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and that it went against the spirit of self-determination' (Heatley 1981, 20). On more private grounds, compulsory enrolment was resisted by the CLP, and supported by the ALP, because it would increase the number of ALP supporters on the rolls. Following Aboriginal protest, compulsory
enrolment was included in the Act in time for the 1980 election. (Enrolment for Commonwealth elections became compulsory in 1983.)

The Electoral Act contained a number of provisions designed to assist Aborigines in voting: 'presiding officers or persons appointed by them, might mark a ballot paper under instruction from a voter who was incapacitated or illiterate; the voter might have someone of his own choice to communicate his wishes to the presiding officer and to see that they were carried out; photographs of candidates would be displayed in the voting cubicle; how-to-vote cards could be used to indicate to the presiding officer how a voter wished to have his ballot marked' (Loveday 1981, 75).

The 1980 Act also initiated the use of mobile polls in order to increase voter turnout in remote districts, prevent fraudulent use of the postal vote, and reduce the intimidation of Aboriginal voters. Polling is now conducted during the week prior to both Territory and Commonwealth elections through mobile polls brought into remote communities by four-wheel drives, fixed-wing aircraft and helicopters. The mobile polls have not only increased Aboriginal turnout; they have also reduced the influence of station-owners on the direction of the Aboriginal vote, and have thereby increased the ALP's share of the vote cast in pastoral districts (Gerritsen and Jaensch 1986, 148).

Here note should also be taken of the Aboriginal Electoral Information Service conducted by the Australian Electoral Commission. This program, which has been running for a number of years across Australia, is designed to increase Aboriginal enrolment, knowledge about the electoral system, and interest in electoral politics. While its focus is not on NT elections per se, the AEIS will inevitably increase both Aboriginal participation in NT elections and the effectiveness of that participation.

Mobile polling and the other measures, however, did not immediately eliminate the electoral participation gap between Aborigines and non-Aborigines in the Territory. In the 1983 election, when mobile polling was used for the second time, the overall turnout rate for the NT was 82 per cent. In the five districts with an Aboriginal majority the turnout rate was only 67.8 per cent, compared to 86.5 per cent in the thirteen urban ridings with an Aboriginal population of less than ten per cent (Jaensch and Wade-Marshall 1984, 31). In part, however, this discrepancy in turnout rates may be caused by the multiple listing of many Aborigines on the rolls, a problem which stems from population mobility, confusion over the spelling and format
of Aboriginal names, and some confusion shared by both Aborigines and electoral officials, as to whether individuals are already on the rolls.

Here it should also be noted that the informal vote was higher in the five Aboriginal ridings, averaging 6.4 per cent compared to 2.2 per cent in the thirteen urban ridings (Jaensch and Wade-Marshall 1984, 31). While these differences may have been reduced in the last few years, they have not been eliminated. Finally, it should be noted that despite the problem of over-enumeration discussed above, substantial numbers of Aborigines are still not on the rolls. In the 1987 NARU survey discussed earlier, 15 per cent of the respondents were not enrolled compared to 9 per cent and 16 per cent of respondents in the corresponding 1983 and 1984 surveys of the non-Aboriginal NT electorate (Loveday and Jaensch 1985, 89).

When the factors of low enrolment, low turnout and high rates of informal voting are taken together, and when we recall the relatively youthful demographic profile of the Aboriginal population, it is clear that the actual electoral power of NT Aborigines is substantially less than their 22 per cent share of the Territory population would suggest. While the gap between the Aboriginal share of the NT population and the Aboriginal share of the NT electorate will narrow with the passage of time, it will not quickly disappear.

(d) Party Differences

Elections give voters leverage on the policy process only if the competing parties represent different policy options or perspectives. If the competing parties do not, if one is merely Tweedledee to the other's Tweedledum, then party competition provides no such leverage. In the present case, the question to be asked is whether the NT parties adopt significantly different stances on Aboriginal issues, and in so doing provide Aboriginal voters with some policy leverage. Fortunately, this is a relatively easy question to answer as the NT parties do differ in their approach to Aboriginal affairs, and indeed differ more in this respect than in any other.

The orientation of the CLP and ALP to Aboriginal affairs have already been discussed in Chapter Two, and need only to be recapped briefly here. The CLP, Heatley (1986, 293) notes, has always been wary of land rights, identifying them as a major impediment to economic development. In its actions the CLP government has routinely drawn the fire of Aboriginal organisations, particularly in its efforts to promote mineral exploration and development. As Heatley goes on to explain (1986, 239-40):
On other fronts, the CLP government has moved to counter aspects of land rights which it contends are detrimental to the wider 'Territory interest' and to economic development. Among them have been opposition in whole or in part to land claims, refusal to register land titles before the status of public roads was clarified, the extension of town boundaries to alienate claimable land, its appeal (unsuccessful) against the Land Commissioner's decision to treat Aboriginal pastoral leases as eligible to claim, the alienation of stock routes and the granting of grazing licences, and legislative and administrative measures to circumvent restrictions caused by sacred sites.

For its part, the ALP has consistently opposed CLP policies on Aboriginal affairs; it has supported land rights and indeed sought their extension, opposed uranium mining, and opposed Territory control of land rights on national parks. While the ALP argues that its Aboriginal policies are not 'anti-development' (Warhurst 1981, 38), there is little question that the CLP has been successful '...in publicizing itself as the only development-oriented party in the NT' (Heatley 1986, 242).

These party differences find clear reflection in NT election results. ALP electoral support has been heavily concentrated in 'Aboriginal districts', with the bulk of elected ALP members coming from those districts in which Aborigines form a majority of the electorate. As Figure 4.1 shows, however, the relationship between the ALP vote and the percentage of the electorate which is Aboriginal becomes less straightforward once we move away from the handful of ridings in which Aborigines form the majority. While on average the ALP vote increases as the Aboriginal share of the electorate increases, the relationship becomes close to a random one in districts where the Aboriginal population is small. There, the Aboriginality of the electorate is a minor factor shaping the electoral outcome.

Whether in fact competing parties differ with respect to Aboriginal affairs may be less important than whether they are seen to be different by Aboriginal voters. Evidence on this account is available from the 1987 NARU survey of 261 NT Aborigines. In that survey respondents were asked, with reference to Territory politics, if the policies of Labor and the CLP were different in regard to Aborigines. As Table 4.2 shows, only a minority saw a clear difference between the parties. Certainly the perceptual differences are less than might be expected given the policy records of the two major NT parties.
Figure 4.1: Scattergram Relationship between Aboriginal Population and ALP Vote
Table 4.2
Perceptions of party differences on Aboriginal policy

'Do you think the policies of Labor and the CLP in regard to Aborigines are different?'

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<th>N</th>
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<tr>
<td>Yes</td>
<td>80</td>
<td>31</td>
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<tr>
<td>No</td>
<td>33</td>
<td>13</td>
</tr>
<tr>
<td>Not Much</td>
<td>96</td>
<td>37</td>
</tr>
<tr>
<td>No Answer</td>
<td>52</td>
<td>19</td>
</tr>
<tr>
<td>Total</td>
<td>261</td>
<td>100</td>
</tr>
</tbody>
</table>

Respondents were asked if they usually voted for the same party and, if so, which party. Seventy-three per cent said they usually voted for the same party. Of these respondents, 74 per cent usually voted Labor, 25 per cent CLP, and 1 per cent Australian Democrat. Finally, respondents were asked how they intended to vote in the upcoming Territory election. Of those stating how they intended to vote, 81 per cent planned to vote Labor, 13 per cent CLP, and 3 per cent National. When asked how they would vote 'if a federal election was held today', 84 per cent of the respondents said they would vote Labor, 10 per cent CLP, and 5 per cent National. (This compares, incidentally, to a study of Aboriginal voters in the Kimberley area of Western Australia [Loveday, Jaensch and Sanders 1986, 26] in which 64 per cent of Aboriginal respondents said they usually voted Labor, compared to only 7 per cent who said they usually voted Liberal and 29 per cent who did not state a usual vote.) Labor, then, appears to enjoy a better than 6 to 1 advantage over the CLP among Aboriginal voters.

In summary, there is a clear difference with respect to Aboriginal policy between the two major NT parties, a difference that finds clear reflection in the voting behaviour and partisan loyalties of Aborigines. This is not to say that such differences are cast in stone; party policies can and do change, and there is some evidence (Gerritsen and Jaensch 1986, 142-3) that party loyalties among Aborigines are not yet being transmitted from one generation to the next. Here it should also be noted that the differences between the CLP and the federal wing of the ALP have been sharper than those between the CLP and the ALP's Territory wing, although the relevance of this distinction to the electorate is open to question. Nonetheless, in the short run at least NT Aborigines have no trouble identifying their friends and foes among the competing parties.
It should be stressed, however, that the informal affiliation of NT Aborigines with the ALP has been a mixed blessing for both partners in the alliance. While it has provided Aborigines with an articulate voice in the Legislative Assembly, that voice has been largely confined to the opposition benches. Although Aborigines and their supporters have not been entirely absent from government ranks, they have been at best a marginal force in the CLP and thus, given the CLP's electoral success, a marginal force within the governing party. At the same time, Aboriginal support has not been and will not be sufficient to propel the ALP into office. Indeed, Aboriginal support may well be a handicap by exposing the ALP to charges of being anti-development and, in conjunction with internal dissension over uranium policy, by opening up serious fissures within the party (Gerritsen and Jaensch 1986, 146). It can be argued, although by no means conclusively in this context, that the Aboriginal-ALP alliance has kept the hands of both partners off the levers of political power in the NT. Yet, at least for Aborigines, it is not clear that an electoral alternative exists given the record of the CLP. While this may be a chicken and egg dilemma, it is nonetheless a difficult one for Aborigines to resolve.

(e) Group Orchestration

The political power of minority groups may be enhanced if group leaders can orchestrate the voting behaviour of their members. If the vote can be delivered, and if other political actors are convinced that it can be delivered, the bargaining position of group leaders is strengthened. Take, for example, an NT referendum on statehood in which the government would be looking for more than 50 per cent support and in which some evidence of Aboriginal support could be crucial for future negotiations with the Commonwealth. Aboriginal leaders may be able to persuade the NT government to include land guarantees in the statehood package put before the people if, in return, they are able to deliver a pro-statehood Aboriginal vote in the referendum. To take what may be a more remote example, given that the Aboriginal support is less critical in normal elections than it would be in a referendum on statehood, Aboriginal leaders may be able to persuade the CLP to soften its opposition to land rights if they were then able to convince the NT Aborigines that electoral support for the CLP was an acceptable tradeoff.

At issue here is the extent to which Aboriginal leaders are able to orchestrate the Aboriginal vote or, conversely, the extent to which individual Aborigines are willing to be guided in their voting behaviour by leadership cues. If the vote can be orchestrated and delivered, it can be an effective strategic weapon in the hands of Aboriginal
leaders. If Aboriginal leaders cannot deliver the vote, if Aboriginal leaders are too divided among themselves, if sufficient resources are not available, or if opposition to the CLP is so deeply entrenched that nothing in the short run will dislodge Aboriginal voters from the ALP, then the strategic effectiveness of the Aboriginal vote is reduced.

The strategic potential of the Aboriginal vote is particularly important given the NT government's commitment to a referendum on statehood. In normal NT elections, the short campaign period makes any orchestration of the vote difficult although not impossible. With the campaign lasting little more than two weeks, getting through to Aboriginal voters, particularly those living in the bush, is a difficult enough task. Campaigns tend to have an urban slant and a heavy media emphasis, neither of which facilitate reaching the rural bulk of the Aboriginal population. One can assume, however, that the statehood referendum would enjoy a longer campaign, and thus that it would be possible for Aboriginal leaders to deliver clear and emphatic voting cues. In this situation, orchestration and mobilisation of the Aboriginal vote would be easier although not easy, and thus Aboriginal leverage on the content of the statehood package would be enhanced.

Effective orchestration requires many things: substantial organisational resources including but not limited to money; the ability to reach one's membership quickly; a willingness on the part of individual voters to follow leadership cues; unity within the group's leadership; and flexibility in bargaining with other political actors. In short, orchestration requires an effective conductor. Whether this is a role that the land councils or other Aboriginal organisations are in a position to play is a question addressed in Chapter Six.

**Party Politics**

There is no question that party politics have become firmly entrenched in the Territory, and that party competition moulds the contours of political life in the NT as it does elsewhere in Australia. We have also seen that Aboriginal leverage on NT elections is, for a number of reasons, less than we might expect given the Aboriginal share of the Territory's population. This lack of electoral clout finds reflection in the small number of Aborigines who have run, or at least who have run successfully, for public office in the NT.

Between 1947 and 1974, none of the forty Councillors who served on the NT's partially-elected Legislative Council were Aborigines (Heatley 1979, 52). In fact, during this period only two Aborigines even stood for election.
(Aborigines, it should be recalled, were not enfranchised until 1962, midway through this period.) In the 1974 election, the first in which all members of what was now called the Legislative Assembly were elected, five Aboriginal candidates stood for election in rural districts with one being elected as a CLP candidate. In the 1977 election, the last before self-government, six Aboriginal candidates ran unsuccessfully. The sitting CLP Aboriginal member did not stand for re-election.

The first election after the inauguration of self-government was held in 1980. The ALP and CLP each ran two Aboriginal candidates, with one of the ALP candidates being elected. In 1983 the ALP preselected just one Aboriginal candidate, and then only after intervention by the federal ALP (Heatley 1984, 3). The ALP candidate was successful while the two CLP and four Australian Democrat Aboriginal candidates were not. Seven Aboriginal candidates ran in 1987, with two Labor candidates being elected.

Aborigines have not been excluded from the existing political parties, but neither have they had much of an impact. Aboriginal candidates have been preselected by both the ALP and CLP in Aboriginal districts, but even here more successful candidates have been non-Aboriginal than Aboriginal. The relatively small number of Aboriginal candidates to date suggests that Aborigines have not been successfully woven into the party fabric of the NT. This conclusion, incidentally, should not stand as a moral reproach to the existing party organisations. Although it may reflect the view that Aboriginal interests can best be represented by articulate whites, it also reflects the limited power of the Aboriginal vote. Parties will nominate Aboriginal candidates when to do so will help them win seats and office. To date, this has not been the case, and it is unlikely to become so outside the small handful of Aboriginal ridings. Even there, Aboriginality is not yet a prerequisite for electoral success.

At some point NT Aborigines may try to secure direct legislative representation by circumventing the existing party organisations. This could be done in one of two ways: by forming an Aboriginal party or by changing the electoral system, possibly to conjunction with the writing of a new state constitution, so as to provide Aboriginal seats in the Legislative Assembly along the lines of the Maori seats in the New Zealand Parliament.

Although an Aboriginal party would have little if any chance of success in most Territory seats, it would clearly be a contender albeit not a sure winner in the handful of seats where Aborigines form a majority of the electorate. In three-cornered contests, supporters of an Aboriginal
party could orchestrate their preferences to swing the seat to one party or another. An Aboriginal party might also be successful in Commonwealth Senate elections if the NT becomes and state and if its Senate representation is significantly increased. As discussed in the last chapter, the prospect of Aborigines being able to run successfully their own Senate candidates increases in direct proportion to any increase in the number of NT Senators.

An Aboriginal party could be of some expressive value to NT Aborigines, just as it could heighten Aboriginal interest and participation in electoral politics. Certainly it would be easier to recruit Aboriginal candidates under the banner of an Aboriginal party than it would under the ALP or CLP banners. Such a party might also provide articulate and in any even less inhibited Aboriginal voices within the Legislative Assembly. The fact remains, however, that political power and particularly legislative power is exercised through partisan structures and loyalties. If Aboriginal members of the Legislative Assembly belonged to a separate Aboriginal party, they would be unable to serve as Cabinet ministers or participate in the government caucus. In all probability they would not even serve in the opposition's shadow ministry. An Aboriginal party would set its elected members apart from the governing party and, as a consequence, outside the legislative corridors of power in Darwin. (An exception here would be the case in which the ALP won a plurality but not a majority of seats.) Aboriginal voices might be heard, but they would be isolated voices rather than part of the government chorus.

Aborigines could face the same problem of legislative isolation if the NT constitution were to provide for special Aboriginal seats in the Legislative Assembly. If the Aboriginal members elected from such seats did not run as ALP or CLP candidates, they would again be excluded from the ranks of the governing party, free to criticise government policy from the outside but powerless to shape it from within. Parenthetically, if they did not run as party candidates, the legislative ranks of the ALP could be sharply reduced while the legislative strength of the CLP would be largely unaffected. If they did run as party candidates, Aboriginal members would be subjected to the constraints of party discipline and the rationale for having special Aboriginal seats would come into question.

The possibility of special Aboriginal seats elected by Aborigines on a separate roll has been raised at various times in Australia, both in the context of the NT (Jaensch 1979, 34) and the Commonwealth at large (Tatz 1980A, 500). Frequently the point of departure in such discussions has been the Maori seats in the New Zealand Parliament. Special seats and a special Aboriginal roll may be of particular
appeal to the one-third of the Territory's Aborigines who live in urban centres, submerged within a European electorate where Aboriginal candidates will be extremely rare and where Aboriginal issues are seldom aired. The New Zealand initiative, however, has generally been seen as neither successful (Tatz 1980a, 500) nor compelling. Rather, the conclusion drawn by Australian observers has been that special Aboriginal seats would institutionalise racial divisions within the Australian body politic and thereby impair the eventual political integration of Aborigines. This is not an argument that can be lightly dismissed.

In the public consultations that will be part of any constitution-building process in the NT, the possibility of special Aboriginal seats is likely to be raised. While it is difficult to conclude emphatically that such seats would not be a good idea, the problem of how Aborigines holding such seats would be integrated into the partisan structures of legislative politics must be kept in mind. Aborigines could well be isolated within the legislative process, prompting charges of institutionalised racism. NT Aborigines might be better to pursue other forms of constitutional protection, trading off special seats for the constitutional entrenchment of land rights. While such a strategy would cater to the needs of land-based Aboriginal communities at the expense of urban Aborigines seeking a political voice, it is nonetheless a tradeoff that has much to recommend it.

Aboriginal Interest Groups

In western democratic political systems, interest groups (or pressure groups) provide important vehicles through which a wide array of interests can exercise some degree of leverage on the political process. Through interest groups the negligible weight of individuals can be pooled and mobilised. Interest groups are the hired guns of democratic politics, providing organisational muscle and a political voice to specific interests which individuals, acting alone, would not be able to defend or promote. They provide a sharper, more focused input to public policy than that which is available through the ballot or party competition; one can more effectively pursue increased funding for diabetic research, tax concessions for the gold mining industry, tariff protection for domestic wines, or financial assistance for the arts through interest group activity than through party competition and electoral politics.

In most cases, interest groups are formed as a matter of personal choice rather than institutional design; individuals voluntarily come together to pool their
resources in order to pursue more effectively their political ambitions. It is not unusual, however, for governments to play an active role in initiating and sustaining interest groups where such groups may not come together on their own initiative, or where the individuals who might comprise such groups lack the necessary resources — be those resources financial, educational or whatever. This happens because organised groups make the business of government easier to conduct. It is easier, for example, for the government to consult with dairy association than it is to consult with thousands of individual dairy producers.

Thus we find that both state and national governments in Australia have played an active role in creating and sustaining Aboriginal political organisations. Here the most important initiative was the creation of the National Aboriginal Consultative Committee (NACC) by the Whitlam government in 1973. As Minister Cavanagh declared at the time (Hanks 1984, 39),

The Government considered that the National Consultative Committee would provide a forum for the expression of Aboriginal opinion on all matters and a channel through which the Government might receive representative advice on the direction in which the Aboriginal people wished to move in matters specifically affecting them.

At roughly the same time, and for largely the same reasons, the Canadian government supplied core funding for the National Indian Brotherhood and the Native Council of Canada in order to provide an articulate Aboriginal voice within the political process.

After an unsuccessful effort in 1974 to recast itself as the National Aboriginal Congress, in 1977 the NACC became the National Aboriginal Conference (NAC) under the Fraser government. While the NAC was designed to be an advisory body to the Commonwealth government, the fact that its members were elected by Aborigines across the country gave it an ambiguous political role. It seemed to be more than an interest group but less than an Aboriginal parliament. As Hanks (1984, 39) explains, the NAC laboured under considerable difficulties:

lack of formal legislative basis ... meant that the NACC had no corporate legal personality. It could not, for example, employ staff: it was as far as the law was concerned, a collection of private individuals to whom the Minister was authorised to pay, if he chose, salaries out of Commonwealth funds. This lack of legal status ensured that throughout its career the NACC
remained dependent on the Department of Aboriginal Affairs for accommodation, secretarial and other support staff, and the payment of travel expenses. That dependence placed it in a vulnerable position which, some commentators suggest, the Department was not reluctant to exploit when it saw the NACC stepping outside its role.

Eventually, its ambiguous political role, ministerial hostility, and ambivalent grassroots support led to the demise of the NAC in 1985. While the vacuum created by its demise has been filled in part by the National Federation of Land Councils and the National Coalition of Aboriginal Organisations, the death of the NAC has created significant political problems for Australian Aborigines, problems to which we will return in Chapter Six.

In the Northern Territory, interest groups have been as important to the political process if not more important than elsewhere in Australia. As Heatley (1979, 176) explains:

As agents of demand articulation, political parties rate far less importance than pressure groups in the Territory political system. In a region where constitutional development is retarded, where dependence is so marked, and where the presence of government is so transcendent, pressure groups have been traditionally the prime means of expression for Territory interests. For the most part, their activities have been directed towards the federal government and its instruments in the Territory.

With the growth of self-government since 1979, interest group interaction with the Territory government has become increasingly important, a change that will become even more pronounced should statehood be achieved.

The first Aboriginal interest group in the NT was the Australian Half Caste Progressive Association, formed in the early 1950s. In 1961 the Council for Aboriginal Rights was established, in large part through the active support provided by political organisations from outside the Territory. In 1971 a Federal Aboriginal Advisory Council of 11 (later 12) Aborigines was formed in the NT to advise the Minister of Aboriginal Affairs. Then the mid-1970s saw the establishment of the Land Councils which rapidly became the dominant Aboriginal political voice in the Territory.

The Land Councils, it should be stressed, are not conventional interest groups although they perform many of the political roles performed by conventional interest
groups and although they have pre-empted the establishment of more conventional Aboriginal interest groups. In a manner somewhat analogous to the NAC, they are an uneasy combination of interest group and legislative body. As the Land Councils will be discussed in more detail in Chapter Six, the point to be made here is that they do provide a political voice for Aborigines within the NT. Indeed, the problem that NT Aborigines may face is not the lack of a political voice, which in some ways is the problem faced by Australian Aborigines with the collapse of the NAC, but rather the existence of too many Aboriginal voices as the Land Councils and community voices do not always harmonise. Certainly at this point there is little need for a new interest group voice for Aboriginal interests within the Territory. Whether a new Territory Aboriginal organisation would be useful in the future depends largely upon how the Land Councils themselves evolve, and how their character may be transformed by statehood.

Conclusions

The evolution towards statehood makes Aboriginal political leverage within the NT a matter of considerable importance. Will Aborigines be able to exercise real power within the new state political system, or will they be left dependent upon a secondary line of political defence, upon the moral obligation of others to meet Aboriginal needs and aspirations?

As this chapter has tried to demonstrate, Aborigines will not be without electoral influence in NT state politics. For the reasons discussed above, however, electoral influence alone is unlikely to provide sufficient leverage on the Territorian political process. While conventional forms of political participation cannot and should not be discounted, they need to be supplemented and complemented. Here Hanks's (1984, 49) discussion of the national scene is of direct relevance to the Territory:

at the same time as power was beginning to shift from the States to the Commonwealth, the claims of Aboriginal people that they should contribute to decisions which affected them - that they were not merely a problem to be solved by others - began to be recognised. The recognition has, to a large degree, been superficial: real power to participate in and control the processes by which political decisions are made is yet to come. Australia's movement towards progressive and effective policies for the fulfillment of Aborigines' potential will depend upon the devolution of that real power (emphasis added).
The importance of such devolution, I would argue, is even greater for the Territory than it is for the country as a whole. The movement towards statehood entails the devolution of power, and in particular power directly relevant to Aboriginal affairs, from the Commonwealth to the NT government. What remains to be seen, however, is whether there will be some devolution of power to NT Aborigines and Aboriginal institutions. If so, how much power will be devolved, with what strings attached, and to whom will it be devolved? Should such a devolution of power be towards local governments or towards the types of political organisations represented by the Land Councils? The first option - Aboriginal community government - is explored in the next chapter while the second option is discussed in Chapter Six.

The forms of political participation discussed above are primarily forms through which individual citizens can exercise some measure of political influence. Elections and voting thus provide a means of integrating Aborigines as individuals into the broader political process. However, when we shift to a discussion of local government and Land Councils, the focus of integration shifts from individuals to Aboriginal communities.
CHAPTER FIVE

LOCAL GOVERNMENT IN ABORIGINAL COMMUNITIES

Introduction

The development of local government in the Aboriginal communities of the Northern Territory has been the subject of a considerable body of recent research (Mowbray 1986; Mowbray and Shain 1986; Turner 1986). It has also been the subject of a rather acrimonious debate between those who promote the potential of community government for the realisation of Aboriginal self-determination (eg. Turner) and those who are much more sceptical (eg. Mowbray). Given the importance of this controversy, and the more general importance of local government developments in the Territory, the North Australia Research Unit has initiated a number of local government research projects, the results of which are forthcoming.

The work that has been done to date and that is presently under way at NARU sets the parameters for the present discussion. It is not my intention to examine the details of or rationale for the existing community government legislation in the NT; this topic has been largely covered by Mowbray and Turner. Nor is it my intention to provide a detailed analysis of how the community government legislation has been implemented in specific communities; Turner's work (1986) and forthcoming NARU reports provide such an analysis. Rather, this chapter focuses on the potential of community government to provide some significant degree of self-determination for Aboriginal communities within the context of statehood for the NT. Will community government provide an effective political shield to shelter Aboriginal communities from potentially adverse state policies? Will community government provide any significant leverage on state politics for NT Aborigines? Will community government provide an effective means of boundary maintenance vis-a-vis the encroachment of the larger society on Aboriginal communities?

Intuitively, local government would appear to offer significant opportunities for Aborigines in the NT, or at least for the majority of NT Aborigines who live in Aboriginal communities rather than in the larger urban centres such as Darwin and Alice Springs. It is, after all, within such communities that the demographic weight of Aborigines can be most fully exploited. While Aborigines may constitute only 1 per cent of the Australian population and 22 per cent of the Territory population, they form an overwhelming majority in dozens of small communities
sprinkled across the NT. Thus one might presume that any devolution of political power to local governments would also, in effect, devolve power to Aborigines who should be able to control local government institutions to a much greater extent than they are able to control state institutions in the NT much less national institutions in the Commonwealth. A lot depends, however, on the political autonomy of local governments and the scope of their powers.

Evolution of Local Government in the Northern Territory

Throughout Australia local governments form a relatively minor tier of government. Certainly they play a much smaller political role, and have much less impact on the lives of citizens, than do local governments in Britain, Canada or the United States (Neutze, 1974, 75). This subdued role is the consequence of both constitutional and, perhaps more importantly, fiscal constraints. As Neutze (1974, 60) explains, 'in every state there are many things, such as housing, that local councils could do under their acts, but rarely do - presumably because they do not want to raise the finance (or cannot, in the case of loans) that would be required.' Thus local authorities are limited or limit themselves to a policy domain spanning parks and gardens, libraries, recreational facilities, the maintenance of local roads and bridges, public health inspections, and waste disposal. Thus when we discuss Aboriginal control of local government, we are discussing a level of government which, in the Australian experience, has been of limited importance. The history of local government in the Territory suggests, moreover, that the NT is likely to follow rather than depart from the national pattern.

Local government was slow to develop in the NT, and even slower to spread beyond a small handful of urban centres. From 1911 to 1977 local government fell under the jurisdictional domain of the Commonwealth government, which apparently saw little need for their creation. While Darwin had an elected council early in the century, it was abolished in 1937 and was not reconstituted until 1957. Local government was not established in Alice Springs until 1971. In 1977, however, control over local government was transferred to the NT government which subsequently established local governments along the Darwin/Alice Springs model in Katherine (1978), Tennant Creek (1978) and Palmerston (1985). Litchfield Shire also attained local government status in 1985, although the form of government in this case was somewhat different.

The recipients of local government were all centres of European population, and thus initial local government institutions had little impact upon or relevance for the
bulk of the Aboriginal population living in traditional communities. Even for Aborigines living in the urban centres, local government was remote. As Mowbray (1986, 67) explains:

At the municipal level Aborigines are almost entirely left out. Generally they are given no reason to participate. There are, in fact, serious obstacles to them doing so. These include the electoral system itself, cultural differences, the relevance of most municipal traditions and programs, the lack of relevant information, encouragement and support.

Mowbray also observed (1986, 39) that in Alice Springs and Tennant Creek there was only one Aborigine among seventeen alderman and mayors. As Mowbray explains, the virtual exclusion of Aborigines from the municipal arena means that an important opportunity for Aboriginal/non-Aboriginal political interaction is lost. Here it should be stressed, however, that the exclusion of Aborigines from participation in local government is by no means restricted to the NT; it has been a general phenomenon experienced across Australia (Rumley 1986, 17ff), albeit one that is beginning to break down; seven Aborigines were elected in recent local government elections in NSW.

The evolution of local government in Aboriginal communities can be traced to initiatives by the Commonwealth's Welfare Branch in the late 1950s. Native councils were established on missions and settlements as consultative mechanisms to promote not only economic and social development, but also the 'political advancement' of Aborigines. Such councils, along with sports and social clubs, were seen as a way of introducing Aborigines to liberal democratic institutions. They were not seen as vehicles for Aboriginal self-government, but rather as an essential training ground if Aborigines were eventually to become active participants in the larger Australian political community. They were a way of improving the Commonwealth's administration of Aboriginal affairs rather than a way of placing control over such affairs in Aboriginal hands.

By the late 1960s, community councils along with housing associations, co-ops, and recreational bodies were in place in most Aboriginal settlements, settlements which were themselves the creation of white administrative practice rather than Aboriginal custom or social organisation. Such advisory councils, however, still fell well short of being local governments; they were primarily 'vehicles for teaching 'civics' or imparting skills in European administrative processes' (Mowbray and Shain 1986,
The councils exercised limited and fragile authority, and were entrusted with only the most trivial administrative tasks. Given their European design and operating style, the councils lacked legitimacy in the eyes of many if not most community residents. The legitimacy conferred on the councils by non-Aboriginal society, particularly when that legitimacy was coupled with such minimal authority, found little acceptance within the traditional Aboriginal society.

In 1973, the Aboriginal policy of self-determination proclaimed by the Whitlam government provided a spur to the further development of local government for Aboriginal communities. The Department of Aboriginal Affairs announced that after the 1974/75 fiscal year communities would not receive funds for maintenance and development unless the applications for such funds were channelled through representative local councils. In 1976 the Fraser government passed the Aboriginal Councils and Associations Act which would enable legal status to be conferred upon Aboriginal councils. The Act was a broad piece of legislation which provided for the incorporation of Aboriginal community councils, business enterprises, and non-profit associations, and which enabled councils to take on responsibility for matters such as housing, health, water supply, education and welfare. However, by the time the Act was proclaimed in 1978, self-government had come into effect for the Northern Territory. (The transfer of control over local government to the NT was another example of the NT assuming normal state functions, as local government in Australia falls under the jurisdiction of the states.) The NT government quickly passed its own Local Government Act (1979) which, whatever its intention, had the result of pre-empting the Commonwealth from organising local government in Aboriginal communities under its own legislation. To date, no Aboriginal council (as opposed to Aboriginal Associations) has been incorporated under the Commonwealth legislation anywhere in Australia (Rumley 1986, 117).

Territorial concern with the Commonwealth legislation was still apparent when revisions to the Local Government Act were introduced in the Legislative Assembly in 1985. Note, for example, the 20 September statement by Community Development Minister, the Hon. Jim Robertson, during second reading of the amended bill:

Honourable members would also be aware that the federal government has also brought in legislation called the Aboriginal Councils and Associations Act. Members would also be aware of the extreme disquiet of all Australian state governments and the people of the Northern Territory at the time of the federal government's passage of that law.
The Northern Territory Government for its part believes that the residents of the Northern Territory Aboriginal communities are as much a part of the Northern Territory as any non-Aboriginal community and their citizens are as Territorian as any resident of Darwin, Alice Springs or other towns. It is my belief, based on my discussions with many of our Aboriginal Territorians, that they wish to associate themselves with our new found Territory independence as much as you and I do. It is for this reason that I believe that those people will look to this future Territory law rather than one made in Canberra.

Given that local government is constitutionally a function of state governments, it is not surprising that the Councils and Associations Act experienced such a hostile reaction in the NT and elsewhere.

With the onset of self-government for the NT, the Commonwealth largely vacated the local government field in the Territory. While Aboriginal communities could still incorporate under the Northern Territory Association Incorporation Act, as could cattle associations, housing associations and so forth, only one community did so. However, while the Commonwealth has abandoned interest in the legislative structure of local government for Aboriginal communities in the NT, it retains a potentially important financial role.

The National Inquiry into Local Government Finance recommended that 'the Northern Territory Government should be encouraged in its efforts to integrate Aboriginal local governments within the Territory's local government system' (Self 1985, 337). In line with the Miller Review of Aboriginal Employment and Training Programs, the Inquiry also recommended that Aboriginal local governments be eligible for Commonwealth funding provided to local governments:

Where an Aboriginal community is judged sufficiently viable to be constituted a local government council, we consider that it should be treated as a normal local government for all purposes. Provided that such a body is properly constituted and elected, and possesses comparable functions to those of other local governments, it should be eligible for Commonwealth equalisation funds and for other specific subsidies available to local governments. However, we must caution that this goal cannot be realised if an Aboriginal local council is too small or artificially
constructed to function at all effectively, and in such circumstances Aboriginal advancement may be more effectively promoted within the context of existing local government institutions.

The NT government strongly supported the recommendation that Aboriginal local governments be eligible for Commonwealth grants. As a result of the Self Report, untied Commonwealth funds made available to local governments under its personal income tax sharing scheme - PITS money - were extended to Aboriginal communities. Unfortunately, the increase in Commonwealth funding was offset by a corresponding decrease in funding from the NT government.

Community Government in the NT

The dominant legislative framework for Aboriginal local government in the NT is now provided by the Local Government Act 1985, and more specifically by the Community Government section of that Act (Part VIII) which revises Part XX of the 1979 Act. The 1985 Act was presented by the Community Development Minister, the Hon. Jim Robertson, as an explicit extension of the Territory's quest for greater local control and independence from Canberra (20 September 1985 address to Legislative Assembly):

Consistent with the determination of Territory people as a whole to obtain self-government or self-management from federal control, there remains a determination amongst many communities, both Aboriginal and non-Aboriginal, to obtain a greater degree of local control in respect of matters over which they have the greatest knowledge and in respect of which they have the most acute and intimate concern. This government accepts and indeed endorses that determination and in our turn we are happy to offer the greatest possible devolution or handover of those functions of government which are of principal or immediate concern to the residents of those smaller and in many cases remote communities ....

Since the passage of the 1985 amendments, which came into effect in July 1986, the NT government has been making every effort to bring Aboriginal communities under the Act. Most, if not all, Aboriginal communities have councils, usually elected, but only a few of them have taken community government status under the local government legislation. The government has stated that after 30 June 1990, communities without a community government scheme or municipal government will not be eligible for Commonwealth grants distributed through the NT Local Government Grants Commission. The Act is promoted as
an important vehicle for Aboriginal self-determination and as a potential means of community access to untied Commonwealth funding.

The Act enables communities, Aboriginal or not, to design their own community government schemes with respect to the following features (not inclusive):

- the boundaries of the community government area
- the composition of the community government council
- procedures for council meetings
- the eligibility of persons to be members
- the eligibility of persons to vote at elections
- the procedure for calling elections and the manner in which elections shall be held
- the functions to be performed by the community government council and the manner of their performance.

This last feature allows councils to operate directly all manner of enterprises, profit or non-profit, or to subcontract. In carrying out its functions, the community government council can pass by-laws which then become laws of the Territory, provided that they do not contravene any existing Territory law.

Community government schemes are subject to Ministerial approval. Here the Act states that the Minister must be satisfied that a substantial majority of the residents of the area to which the scheme relates are in favour of the boundaries of the community government area, the conditions of election and eligibility, and the functions to be performed by the council. He must also be satisfied that the community government council is capable of carrying out any functions that it proposes to undertake.

There are several aspects of the Act which are of particular importance to Aboriginal communities in that they allow such communities to mould the structures of local government to fit local circumstances. Thus, for example, the territorial domain of the community government can be defined so as to include specific sites and clan groupings. Outstations linked to the community can be brought within the community government area. Restrictions can be placed on the eligibility of persons to vote or hold office, restrictions that can potentially be used to curtail the
power of the non-Aboriginal electorate, should it exist. Councils can be structured so as to ensure the representation of clan groupings, and thus ensure that the composition of the community government council reflects the social structure of the community. It should be noted, however, that to date most community government schemes have been very conventional in their design; most reflect the NT government's preferred option that the rights to vote and stand for office, and hence the opportunity to participate in community decision-making, be based on simple residence within the community (Turner 1986, 27). Thus the possible conflict between the democratic rights of non-Aborigines and the membership powers of community government has been largely avoided.

The 1985 Act gives community governments the power to levy rates and charges: 'a community government council may, subject to this Act, raise revenue by rating land within its community government area and charging for work done and for services, facilities, amenities and utilities provided.' Community governments are also given the power to borrow money and carry deficits, but only with the prior approval of the Minister and only in accordance with approved estimates. The power to tax, though, is the one of great potential importance. On the one hand, it may provide a degree of fiscal independence for community governments if the community is wealthy enough to be able to generate significant tax revenues, a rather large 'if' for most Aboriginal communities. On the other hand, the ability to tax may become the necessity to tax if the NT government reduces its funding for Aboriginal communities. Community governments can now be required to raise a significant proportion of their revenue needs from a local and generally very limited revenue base.

This feature of the Act is of particular concern to Mowbray who argues (1986, 23) that the NT government is trying to reduce its expenditures on Aboriginal affairs by having Aboriginal communities generate a significant share of their own revenue requirements:

Once incorporated as a community government, a council may be expected to raise a higher proportion of its own revenue, more like other forms of local government. The co-incidence of the Northern Territory Government's fiscal problems and its newfound enthusiasm for community government is thus more explicable.

Here it is interesting to note that in 1981/82, municipal governments in the NT (Darwin, Alice Springs, Katherine and Tennant Creek) raised 38 per cent of their revenue from rates and 41 per cent from government grants, while
Community councils received 93 per cent of their revenue from government grants (Mowbray 1986, 28). Whether in the long run community governments will move closer to the municipal governments in this respect remains to be seen, although there is little question that the revenue base of community governments will not approach that of municipal governments in the foreseeable future.

There are also other distinctions between municipal governments - which cover the six large urban areas in the NT - and the community government councils, six in Aboriginal communities and three in small non-Aboriginal or mixed towns (Mataranka, Pine Creek and Elliott). As Turner (1986, 25) points out, 'municipal government is a less flexible form of local government than Community Government, and entrenches certain biases about the nature of political organisation - the principal one being that rights in a jurisdiction should be determined by simple situation in space.' Community government schemes can accommodate a much wider range of residency requirements, electoral procedures and representational principles than can municipal governments. The latter, for example, must incorporate compulsory voting and preferential ballots.

The differences, however, are not all to the advantage of community government councils. Mowbray, for example, makes the following argument (1986, 3):

The municipal councils are financially better off, have relatively higher status and more authority than the community councils .... In contrast, the community councils and community government are treated in an arrogant and paternalistic manner, and are tied to central government policy by extremely tight financial, as much as legal, regulation. They are able to exercise hardly any independent authority at all.

Mowbray argues (1986, 65) that while none of the Territory forms of local government have much independence from the NT government, 'the municipal type offers significantly more room for manoeuvre than community councils.'

Comparing the two forms of government, of course, is very difficult given that the underlying communities are so different in their size, social composition and economic resources. Darwin and Lajamanu are very different communities, and it is not at all clear that the form of local government best suited for one would also be best suited for the other. The critical question is whether the community government framework is one in which Aboriginal communities will be able to achieve a reasonable measure of self-determination or self-management; a reasonable measure
of control over their own lives and a reasonable measure of protection from the broader society. Turner maintains (1986, 24-5) that the community government framework does have this potential:

In sum, we can say that Part VIII, Community Government, permits self-management and self-determination subject to qualification by participation in a second tier of Government within which the local community is also embedded, namely the Territory. By the same token, the autonomy of this second tier, particularly in the case of the Northern Territory, is subject to qualification by the first-tier federal Government within whose ambit it falls and who controls a sizable portion of its revenues.

In order to understand just how important Turner's qualifications are, it is useful to examine more closely the autonomy and scope of community governments in the NT.

**Autonomy of Community Governments**

In a formal sense, the autonomy of community governments is very limited. Community governments are creatures of the Territory government, just as municipal governments across Australia are creatures of the state governments. Local governments generally and community governments specifically exercise only delegated powers which can be altered, restricted or withdrawn by the senior government. Community governments, and local governments generally, do not enjoy any constitutional status; their political authority is derived solely from legislation passed by the state or Territorian government.

Section VIII of the Local Government Act contains numerous references to the need for ministerial approval, or to the power of the Minister to disallow community council decisions. For example, the Minister must approve community government schemes in the first place, and the Legislative Assembly has the power to disallow such schemes either in whole or in part; the Minister may determine the maximum amount of fees, allowances and expenses payable to members of the community council; the Minister has the power to appoint an auditor for the community government, and so on. In a formal sense, the powers of the Minister to intervene in and regulate community councils are very extensive. These powers, however, are not that different in a formal sense from those that the Minister has with respect to municipal government in the Territory, or from those that state governments generally retain with respect to local authorities.
In North America, the formal autonomy of Aboriginal governments has been a matter of considerable importance. In the United States, tribal sovereignty is now widely accepted although, as in case of community governments in the NT, tribal legislation cannot contravene existing Congressional or state legislation. In Canada, Indian organisations have emphatically rejected municipal models of Indian government proposed by the federal government, even though Canadian municipal governments are somewhat more robust than their Australian counterparts. Indians have sought, albeit unsuccessfully so far, a form of self-government in which Indian governments would exercise constitutionally-defined powers rather than powers delegated to them by the national or provincial governments.

It is clear that for those seeking a form of Aboriginal self-government which recognises the sovereignty of Aboriginal peoples, the community government model has little to recommend it. Thus, for example, Mowbray (1986, 1) states in his analysis of community government in the NT that 'there is no intention in this report to imply that even the best possible system of local government can substitute for other conditions for achieving Aboriginal self-determination, particularly full rights of ownership of traditional land.' Mowbray goes on to argue (1986, 2) that 'since local councils operate within legal and financial constraints mainly decided by superior levels of government, and have no power to legislate in their own right, the term "government" is somewhat misleading.'

At the same time, however, we must be careful not to exaggerate the importance of formal constraints on the autonomy of community governments. Many provisions for Ministerial override and intervention will not in fact be exercised, or will be exercised infrequently in a limited number of cases. Once local governments have been established, their practical autonomy tends to be greater than the formal constraints would imply. The situation here is analogous to the formal powers that the Commonwealth had, and to some degree still has, to intervene in decisions taken by the NT's Legislative Assembly. In fact, those formal powers were rarely exercised, in part because the political costs of so doing were too high. The same pattern is likely to emerge with respect to community governments. While this is not to say that the Minister's powers will become constitutional deadletters, they are unlikely to be exercised on a routine or frequent basis. Here we might also note that a state constitution for the Territory could spell out some of the powers of community governments, and thus further restrict the potential for Ministerial intervention.
The more serious constraint on the autonomy of community governments comes from the imposition of fiscal constraints by the NT government, and from the very narrow and fragile local revenue base upon which community governments can draw. As Mowbray points out (1986, 66), 'the major channel for government control . . . is not in the legislation itself [the Local Government Act], but in the financial arrangements that determine the scope and impact of community council activities.' Regardless of what they are empowered to do, what community governments can in fact do is a function of the financial resources they can command.

Here an analogy can be drawn with the relationship between the NT and Commonwealth governments. Although most state-like functions were given to the Territory by the Self-Government Act, it was the Memorandum of Understanding, setting out the financial relationship between the two governments, which determined the extent to which self-government could in fact be achieved. The analogy can be extended to point out that, just as the NT is unable to raise sufficient revenue from its own sources and must thus rely to a greater extent than the states upon fiscal transfers from the Commonwealth, so too will community governments be unable to support themselves from their own revenue base. Most Aboriginal communities will not be economically self-sufficient, and thus neither will community governments in those communities be able to rely to any great extent on locally-generated revenue.

The fiscal constraints on the autonomy of Aboriginal community governments are a matter of serious concern. At issue are the total revenues available to community governments, the extent to which grants from the NT government are tied to specific purposes, the extent to which community governments will receive Commonwealth support, the degree of financial regulation imposed by the Territory, and the extent to which community governments will command discretionary funds over and above the funds required for the provision of essential services, which are the first charge on council budgets. Also at issue is the extent to which increases in untied Commonwealth grants to communities are offset by an equivalent decrease in Territory funding, and thus the extent to which untied grants must be used for the provision of essential services. At this point, the fiscal relationship between the NT government and community governments is too new and too much in a state of flux to permit any firm conclusions. As Rumley (1986, 13) points out,

the basic point about the right to self-determination is that it involves a choice on the part of indigenous peoples as to the degree and
form of autonomy which they see as appropriate to their interests and needs. This point emphasises the fact that different groups or communities of indigenous peoples are in varying circumstances and may not all choose the same political status as a result of exercising their right to self-determination.

The community government framework has this flexibility. What remains to be seen is whether Aboriginal communities will be able to command the financial resources necessary to exploit this flexibility, or whether the paper opportunities will not be realised because of fiscal constraints.

Scope of Community Government

Section 270 of the Local Government Act states that:

'a community government scheme shall not contain a provision for or in relation to the performance of a function by a community government council unless that function is a function in relation to -
(a) commercial development; (b) communications;
(c) community amenities; (d) education or training;
(e) electricity supply; (f) garbage collection and disposal; (g) health; (h) housing;
...... (j) relief work for unemployed persons;
(k) roads and associated works; ....
(m) sewerage; (n) water supply; ...... (p) welfare;
(q) raising of revenue in accordance with this Part; or (r) such other matters as are approved by the Minister.

While many of these functions relate to the provision of essential community services, others appear much broader in their scope. Certainly the commercial development, education and training, health, housing, and welfare heads fall into this latter category, while the last head provides a potentially unlimited opening for community governments.
It should also be noted that the legislation enables community government councils to establish a wide range of enterprises, either profit or non-profit, through which such functions can be carried out. To date these enterprises have included workshops, stores, a market garden, a cattle station, an airline agency, travel agencies, a cinema, construction firms, a print shop and a bakery (Turner 1986, 29).

Thus the potential scope or 'domain' of community government sometimes appears to be quite impressive. We must keep in mind, however, that the legislation enumerates what community government councils can do, not what they must do and not what they might in fact be able to do. In
Australia generally, local governments rarely occupy their full legislative domain; they are empowered to do much more than they in fact choose to do or are able to undertake. The question to be posed for the Territory, therefore, is to what extent community governments will be able to occupy the legislative domain set out in the Local Government Act?

In addressing this question we must remember that Aboriginal communities vary in their aspirations. In the event that specific communities choose not to avail themselves of the opportunities provided by the community government legislation, this cannot be seen as a fault of the legislation itself. More importantly, however, Aboriginal communities vary in their capacity to undertake the community government functions outlined above. Quite apart from the issue of varying community aspirations, there are very real constraints which curtail the potential scope of community governments in Aboriginal communities.

First, there is the matter of fiscal constraint. If community governments have only sufficient funds to meet the provision of essential services, then the fact that they are empowered to do much more is of little consequence; the nominal power to act is meaningless without the necessary financial resources. For most communities, the availability of such resources will depend upon the level of funding provided by the NT government as the capacity of Aboriginal governments to raise revenue from their own communities will be very limited. Thus in a very direct way, the NT government determines the scope of Aboriginal community government by the amount of funding it provides. While Commonwealth funding may also be available, it is of consequence only if the Commonwealth funding is in addition to, and not instead of, funding from the Territory.

As Mowbray explains (1986A, 32-3), if the Territory funding for community government covers little more than essential services, then the scope of community government will be restricted to the provision of essential services:

The Territory's Submission to the Commonwealth Grants Commission 1982-83 (p.19) suggests the following as a measure of 'a reasonable level of services' from an Aboriginal community government: Reticulated water and power; sewerage; internal and access roads; drainage; airstrips or barge landings; a staffed council office; up to date accounts and regular returns; and responsible supervisors. It is most significant that there is no mention here of welfare, health, educational, cultural, or recreational services or of overall development roles.
While the Territory's expectations concerning the scope of community government may have increased in the last few years, there is no evidence that funding has increased in step. Given the journey of fiscal constraint upon which the Territory and Commonwealth are currently embarked, increased funding in the new future seems a remote possibility. Thus, as Mowbray concludes (1986A, 33), Aboriginal community governments may have the nominal power to provide services without having the financial means to do so.

A second constraint stems from the fact that some functions can be exercised only in relation to things not being carried out by a government agency or department. With respect, for example, to communications, education and training, electricity supply and health, a community government council can only take up the function to the extent that an existing government agency is not already providing the service. It is not clear, however, that existing agencies have left much unoccupied 'space', or that they would be prepared to vacate service space so that it could then be occupied by community governments, assuming that the community governments had the financial wherewithal to occupy it. If existing government departments and agencies are not willing to withdraw from Aboriginal communities, to have their services provided instead by community government agencies, then the functional scope of community government will be much more limited than the legislative heads might suggest. On this point, there is no evidence that the Departments of Health and Education are prepared to surrender any of their responsibilities to community governments.

Here it should also be noted that some of the services that community government councils may be interested in undertaking - housing, the community store, cattle operations - may already be provided by separately incorporated associations within the community. In this case, the scope of community government depends once more on the extent to which such associations are prepared to make way for the community government. If they are not prepared to give ground, then the scope of community government is again limited.

A third and critically important constraint stems from the limited population base of most Aboriginal communities. By way of illustration, Table 5.1 presents the 1986 census figures for Aboriginal communities in the NT of more than one hundred persons. These figures, admittedly, should be treated as no more than rough estimates given the population mobility within and among Aboriginal communities. Population figures fluctuated dramatically between the 1981 and 1986 censuses, with communities increasing in population by as much as 82 per cent (Milikapiti) and decreasing by as much
as 57 per cent (Gapuwiyak). Community totals also do not include surrounding outstations which, in some cases, contain substantial numbers of people. In East Arnhem excluding Nhulunbuy, for example, 2897 Aborigines (70 per cent) lived in the six communities of Galiwinku, Gapuwiyak, Numbulwar, Ramingining, Milingimbi and Yirrkala while another 1259 lived in outstations at the time of the census. Nevertheless, the central fact is that virtually all Aboriginal communities in the Territory are small, and many are very small. The question that must be addressed is whether Aboriginal communities have a sufficient population base to support community governments of any significant range and scope?

At this point some international comparisons may be useful. Successful tribal governments in the United States have enjoyed large population bases. The Navajo Nation, for example, contains more than 120,000 people within tribal boundaries, a figure not much less than the population of the entire Northern Territory. In Canada, the most expansive and most successful Indian government schemes have come from reserve communities of five to ten thousand people (eg. Ponting 1986), although in some cases a substantial measure of self-government has been attained in communities numbering only a few thousand. Nonetheless, self-governing Aboriginal communities in North America, or those with self-government aspirations, tend to be huge in comparison with the Aboriginal communities of the Northern Territory.

In considering the size of Aboriginal communities in the NT we must also remember that such communities have relatively high dependency ratios, with over 40 per cent of the population being under 18 years of age. Given the existence of a substantial number of non-literate untrained or transient adults, most community governments have a small pool of human resources from which to draw. It is by no means certain that there will be sufficient human resources to support wide-ranging, activist community governments. If Aboriginal communities are trying to promote economic development at the same time, the available human resources will be stretched even thinner. The experience in larger Canadian Indian communities has been that sufficient human resources for self-government and economic development have been difficult to find, and that burnout has been a serious problem for the relatively small handful of well-trained and highly motivated individuals.

The inherent problems of size faced by Aboriginal communities are further exacerbated by the outstation or homeland movement. In the mid-1980s, the Department of Aboriginal Affairs estimated that there were approximately 10,000 people living in 360 homeland centres, of which
Table 5.1  
Population of Aboriginal communities in the NT  
1986 census - Aborigines only

<table>
<thead>
<tr>
<th>Community</th>
<th>1986 Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alicurung</td>
<td>318</td>
</tr>
<tr>
<td>Amoonguna</td>
<td>207</td>
</tr>
<tr>
<td>Angurugu</td>
<td>535</td>
</tr>
<tr>
<td>Areyonga</td>
<td>152</td>
</tr>
<tr>
<td>Beswick</td>
<td>291</td>
</tr>
<tr>
<td>Bamyili</td>
<td>386</td>
</tr>
<tr>
<td>Borroloola</td>
<td>464</td>
</tr>
<tr>
<td>Daguragu</td>
<td>220</td>
</tr>
<tr>
<td>Daly River</td>
<td>196</td>
</tr>
<tr>
<td>Delissaville</td>
<td>193</td>
</tr>
<tr>
<td>Docker River</td>
<td>245</td>
</tr>
<tr>
<td>Galiwinku</td>
<td>952</td>
</tr>
<tr>
<td>Gapuwiyak</td>
<td>224</td>
</tr>
<tr>
<td>Hermannsburg</td>
<td>453</td>
</tr>
<tr>
<td>Hooker Creek</td>
<td>567</td>
</tr>
<tr>
<td>Iwupataka</td>
<td>194</td>
</tr>
<tr>
<td>Kalkaringi</td>
<td>285</td>
</tr>
<tr>
<td>Kintore</td>
<td>262</td>
</tr>
<tr>
<td>Maningrida</td>
<td>594</td>
</tr>
<tr>
<td>Milikapiti</td>
<td>397</td>
</tr>
<tr>
<td>Milingimbi</td>
<td>588</td>
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<tr>
<td>Minjilang</td>
<td>132</td>
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<tr>
<td>Nguiu</td>
<td>1008</td>
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<tr>
<td>Ngkurr</td>
<td>625</td>
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<tr>
<td>Numbulwar</td>
<td>362</td>
</tr>
<tr>
<td>Oenpelli</td>
<td>537</td>
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<tr>
<td>Papunya</td>
<td>307</td>
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<tr>
<td>Peppimenarti</td>
<td>145</td>
</tr>
<tr>
<td>Port Keats</td>
<td>844</td>
</tr>
<tr>
<td>Pularumpi</td>
<td>226</td>
</tr>
<tr>
<td>Ramingining</td>
<td>356</td>
</tr>
<tr>
<td>Santa Teresa</td>
<td>376</td>
</tr>
<tr>
<td>Ti Tree</td>
<td>211</td>
</tr>
<tr>
<td>Uluru</td>
<td>141</td>
</tr>
<tr>
<td>Umbakumba</td>
<td>245</td>
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<tr>
<td>Utopia</td>
<td>422</td>
</tr>
<tr>
<td>Warruwi</td>
<td>130</td>
</tr>
<tr>
<td>Willowra</td>
<td>210</td>
</tr>
<tr>
<td>Yirrkala</td>
<td>415</td>
</tr>
<tr>
<td>Yuendumu</td>
<td>680</td>
</tr>
</tbody>
</table>

Average population = 377
approximately 260 were occupied at any one time (1983/84 Annual Report, 40). The average population of the occupied homeland centres was about 40 people. In the 1986 census, 8216 (23.6 per cent) of the Territory's 34,739 Aborigines lived outside either urban areas or the communities listed in Table 5.1. Regardless of other advantages that it might offer, the outstation movement complicates the implementation of local Aboriginal self-government by further fragmenting already small Aboriginal communities (Cole 1979, 270). However else it may be assessed, the NT government's decision to withdraw infra-structure support (except for water) from outstation communities containing less than 50 people may help contain this fragmentation and, in this limited way, facilitate community self-government.

A fourth constraint stems from the heterogeneity and internal fragmentation which are characteristics of many Aboriginal communities. As Mowbray points out (1986A, 34), the degree of coherence between different groups in the locality can be of vital importance in determining the success of local government. It should not be surprising if newly created local government institutions have some difficulty overcoming community factionalism, particularly when such institutions may imperfectly reflect traditional structures of leadership and authority within Aboriginal communities. Here Leske's description of Hermannsburg (1977, 98-9) is still relevant, although written some ten years ago:

The failure of the elected councils, and the Mission's unchanged desire to hand over the direction of the work and the property at an appropriate time to the Aborigines, eventually led to further discussions with representatives of the Aboriginal community. These discussions ultimately revealed that the elected councillors were not the real leaders and representatives of the people. The true representatives of the clans can never be elected in Western democratic-style; they are born to that position, and their culture and society demands that they remain in the background. In other words, the elected councils could decide on anything they wished, but had no real status in the community, nor any right to act or speak for their clan or family - much less for one to which they did not belong. It further transpired that the community at Hermannsburg was made up not of eight, but of almost 20 separate clan or family groups, who considered themselves to be as distinct from each other as Scandinavians from Greeks, or French from Germans. The fact that they were Aboriginals did not make them one, any more than a white skin makes Europeans one.
Over time, we can expect that elected community government councils will acquire greater legitimacy, authority and power within their communities. In the short run, however, we must not underestimate the immense political problems that community government councils face in trying to reconcile the structures of local government with traditional norms and practices, all in the face of very limited financial and human resources. That some governments will fail is only to be expected; that some will succeed is only to be admired.

The problems that stem from the small size of Aboriginal communities are fundamental ones which pose serious difficulties for the successful implementation of self-government. Just as many if not most Aboriginal communities face a doubtful future as viable economic units, so too do many face a doubtful future as viable political units within the structures of community government. By themselves, Aboriginal community governments will be too small to assemble the demographic, financial and political resources necessary for effective self-determination. Whether other institutions can be found which will be more successful is the topic pursued in the next chapter.

Conclusions

In a 1980 publication (Fact Sheet No. 4), the Department of Aboriginal Affairs defined self-management in the following terms:

Self-management acknowledges that Aboriginals must be involved in the programs that concern them. They must determine their own priorities, develop initiatives and take responsibility for the decisions they make.

Aboriginal local government, within the context of the NT's community government legislation, provides a step in this direction. Even if the full potential scope of community government is not realised, as it is unlikely to be in the great majority of cases, community government offers significant net gains to Aboriginal communities. Through community government, Aborigines can exercise a modest degree of control over their own lives. The autonomy of the local community can be protected to a degree from the larger political order and from other Aboriginal communities. Self-determination in this context poses little threat to the non-Aboriginal population, and is perfectly compatible with established political institutions and norms within both the Territory and Commonwealth.

Community government offers, then, a degree of political control. It is a form of control, moreover, which
fits the small scale of Aboriginal society, and which is most easily adaptable to local traditions and circumstances. However, community government does not offer a sufficient degree of political control or influence. Community government does not provide an effective interface with the NT government, and thus does not provide an effective Aboriginal voice on state programs and spending priorities which will continue to impinge upon Aboriginal communities with considerable force. It does not provide a political voice for Aborigines living in the larger urban centres, or for Aborigines living in town camps (see Wolfe, 1987, 77). Community government provides a fragmented Aboriginal voice in Territory politics, or what will some day be state politics, and thus does not provide leverage on the larger political process. While community government, like electoral participation, may be good in and of itself, it does not provide sufficient organisational muscle or political coherence for the Territory's Aboriginal population. Whether this can be provided by the land councils is the question to which we now turn.
CHAPTER SIX

STATEHOOD AND THE LAND COUNCILS

Because many Aboriginal people live in areas that are remote, not just geographically but economically, socially and culturally from the rest of Australian society, and because they are without wealth, their ability to alter the relationship [between Aborigines and the broader society], or to take an active role in changing their circumstances, is extraordinarily circumscribed (Altman and Peterson 1984, 51).

Introduction

Since the early 1970s, the official Aboriginal policy of the Commonwealth government has been to encourage Aborigines to assume greater control over their own lives. In 1972, Whitlam's Labor government introduced its policy of self-determination, encouraging Aboriginal communities to determine the pace and nature of their future development as important components within a diverse society (Nieuwenhuysen 1980, 9). Under the Fraser government in the late seventies, self-determination became self-management, a policy requiring that '... Aborigines, as individuals and communities, be in a position to make the same kinds of decisions about their future as other Australians customarily make, and to accept responsibility for the results flowing from those decisions' (Viner 1978, 3443). Recent Commonwealth usage retains the term self-management, although occasionally with the prefix devolved self-management.

However, as we have seen in the last two chapters, and as Altman and Peterson note above, the ability of Aborigines to control their own lives is in fact 'extraordinarily circumscribed'. Even in the Northern Territory the electoral power of Aborigines is limited, as are the potential scope and autonomy of local government institutions in Aboriginal communities. Should statehood come to pass in the NT, it is unlikely that electoral participation or community government, alone or in combination, will give NT Aboriginals enough leverage on the state political system to ensure anything more than a very modest degree of self-determination or self-management.

In a challenging analysis of the political position of Australian Aborigines, Hanks (1984, 19) asks the following questions:
How have the structures of Australian government responded to [the] increasing demands for recognition of the autonomy of Aborigines? Have they continued to reflect the assumptions of a European homogeneity mirrored so clearly in our formal constitutions? Or has there been some recognition of heterogeneity, of the need to establish structures which allow for adjustment of government policies in response to the needs and demands of Aboriginal people?

The short answer, both for Australia and the Territory, is that such structures have not been put in place, although the community government legislation in the Territory has some capacity to accommodate community differences. However, a more important exception to this conclusion came with the granting of Aboriginal land rights in the Territory and, more specifically, with the concomitant establishment of the land councils. It is the land councils, I would argue, which hold the key to effective Aboriginal self-determination, self-management or self-government in the NT. The potential of the land councils in this respect, and the odds of that potential being realised, provide the subject matter for the present chapter.

Before continuing, it should be stressed at the outset that the land councils in the Northern Territory are not an expanded form of traditional Aboriginal political organisation. As Altman (1983, 106) explains:

Traditionally there were no pan-Northern Territory [Aboriginal] political institutions and contact between clans living far from each other was limited and indirect. Today, new Aboriginal political institutions have been created in an attempt to resolve conflicts (over land and, indirectly, mining royalties) between Aborigines.... This leaves room for misunderstanding and misrepresentation, given that a significant proportion of the Territory's Aboriginal population continues to live in extremely remote locations pursuing a largely traditional lifestyle.

The land councils are not rooted in the Aboriginal communities; they do not reflect traditional values and patterns of political organisation. Rather, they are the creatures of Commonwealth legislation (not Territory legislation), and more specifically of the Aboriginal Land Rights (Northern Territory) Act 1976. They embody a pan-Territorian conception of Aboriginality that finds little if any support in the anthropological literature. Nonetheless,
the councils play an extremely important political role in
the NT, a role that is complicated but by no means reduced
by their lack of traditional roots.

Land Rights and Political Control

The Land Rights Act gave NT Aborigines inalienable
freehold title to existing reserves and set in place the
legal machinery through which they could claim, on
traditional grounds, vacant Crown land. (The Act defines
traditional owners as being a local descent group of
Aborigines who have common affiliation to a site on the land
which gives the group a primary spiritual responsibility,
and who are entitled by Aboriginal tradition to forage as of
right over the land.) In 1976, Aboriginal reserves including
Arnhem Land constituted about 18 per cent of the NT land
mass. Since that time land claims, pastoral excisions and
the purchase of cattle stations, including the recent claims
to Katherine Gorge and stage three of Kakadu National Park,
have increased the amount of land owned or under claim by
Aborigines to approximately 47 per cent of the NT land
mass.

The Act recognises the special relationship between
Aborigines and the land, a relationship that must be
protected if distinctive Aboriginal cultures and social
patterns are to survive (Williams 1986). In so doing the
Act also gives control over a potentially important economic
resource to a group desperately lacking in other economic
resources. As Jennett (1985, 22) notes, 'weapons such as
the strike and the vote are of little use to Aborigines
unless they can convince others to strike and vote in
support of them.' Aboriginal land, however, is a resource
that lies under Aboriginal control alone.

Aboriginal ownership of Aboriginal land is a
necessary condition for self-determination. As Rowley
(1981, 259) argues in a specific analysis of the
now-defunct Aboriginal Land Fund Commission, but an analysis
of more general applicability, ownership of land is
essential:

Without property, the concept of the Aboriginal
corporation as a means of facilitating Aboriginal
development is open to question. There has to be
something of importance for the group to make
decisions about; and the assets on which the
nature and style of living depends are always
decisive. In fact, I would argue that no social
group can maintain orderly life without control of
those basic assets of land, water, shelter, etc.
on which orderly human living depends (emphasis
added).
The Land Rights Act gave Aboriginal people something of importance to make decisions about - Aboriginal land. However, while ownership of land is a necessary condition for self-determination, it is far from a sufficient condition. 'Making decisions' implies not only ownership of land but also control over that land and political institutions through which decisions can be made and enforced. Land must be managed, as must the complex relationship between that land and its residents, on the one hand, and the broader community on the other. The need for management, for protection and control, requires in turn some effective form of Aboriginal government if the ownership of land is not to be an empty vessel for Aboriginal interests and aspirations.

The notion of control implies active political organisation, something more than retreat onto Aboriginal land in the hope, bound to be dashed, that the larger society will not intrude. Benign neglect is no longer on the cards. The larger society will intrude, and such intrusion must be controlled.

The importance of control is readily acknowledged by the land councils. Note, for example, a statement presented to Prime Minister Hawke by the Executive of the Northern Land Council on October 16 1984:

Cultural spirits control our land and if you take away the power to control this land you are taking away our spirit .... How long do we have to fight to protect our land and the power of control that we have at present? ... It is our land and we want to be able to control what happens to our land.

Note also a statement to the 1986 ALP convention by the National Coalition of Aboriginal Organisations:

Self-determination for the Aboriginal and Islander people of Australia, demands by its own definition, that we must have the right to make our own decisions and control our lives. It is vital, that free from Government imposition, Aboriginal and Islander Australians initiate and control policies and programs according to our own aspirations .... the essence of self-determination is control.

In their discussion of Aboriginal mineral rights, McGill and Crough (1986, 11) make the point that 'the question of actual ownership of the subsurface estate is of no great importance to any consideration of indigenous resource rights in North America and Australia.' The crucial issue, they argue, is control - 'the extent to which Indians and
Aboriginals are entitled to prevent and regulate access to the subsurface estate.

There is, then, an important relationship between land rights and political rights. As Peterson (1981, 3) explains:

land rights concerns both property and political rights. Land rights movements seek to restore, to the greatest extent, the original rights [of Aboriginal people]. Complete restoration is almost unknown and certainly impossible for those people encapsulated in nation states but the quality of land rights granted to a group is likely to be assessed in direct relationship to the degree to which they restore the original situation with respect to both land and political autonomy. A further complication arises from the fact that, strictly speaking, it is not so much a matter of restoring particular old rights but of obtaining new rights, in an altered social and political context, that restore such things as economic and political autonomy, wealth and well being in the new situation.

This linkage between land rights and political rights is well recognised in the Canadian north where Aboriginal leaders '.... have been adamant that land claim settlements go hand in hand with the evolution toward self-government in the Yukon and Northwest Territories' (Hunt 1983, 461). Land rights are seen as the foundation upon which political rights can be built and through which economic development can be pursued, rather than as rights which can stand alone (Dacks 1981). In southern Canada, where Aboriginal title has been entrenched through the treaty process, land rights are still seen as the essential foundation for Indian self-government which will, in turn, create a buffer insulating the Indian way of life from the vagaries of federal and provincial legislation and policies (Bear Robe 1987).

The linkage between land rights and political rights has been less explicitly recognised in Australia where land rights have been discussed quite apart from the complementary need for Aboriginal political institutions through which such rights could be protected and mobilised for both economic and social development. In the Northern Territory, Aboriginal land rights were granted in the Land Rights Act without any concomitant recognition of Aboriginal political rights. However, the linkage was implicitly recognised by the creation of the land councils. While the councils were certainly not seen at the time as embryonic Aboriginal governments, they have come to assume something close to this role.
The Land Councils

Although the land councils received legislative embodiment in the Land Rights Act, they actually came into existence some years earlier. In the first report of the Aboriginal Land Rights Commission (July 1973), Justice Woodward called for the creation of two Aboriginal land councils 'to present to him the views of Aboriginal people in the Northern Territory on their land rights.' One was to be for the central region of the NT, based in Alice Springs, while the second was to be for the Top End, based in Darwin. In his second report, Woodward recognised that the land councils 'went beyond anything natural to Aboriginal social organisation' but argued (1974, 65) nonetheless that the two councils 'must each play a vital role in putting Aboriginal land rights into effect' (emphasis added). Woodward added substance to his 1973 recommendation by proposing a number of specific functions for the land councils, while recognising (1974, 68-9) that 'they will tend to develop directions of their own over time':

(a) providing the main meeting places for developing Aboriginal policies on matters relating to land;

(b) representing Aborigines in negotiations with the Government on all matters relating to land rights in their regions, particularly any proposed legislation or regulations;

(c) protecting the interests of traditional owners in all negotiations concerning the use of land;

(d) acting for traditional owners and for communities in all discussions and negotiations with departmental officers, mining companies, tourist interests or others, concerning land usage;

(e) establishing a register of traditional owners of Aboriginal lands ...;

(f) investigating and reporting on the land requirements of Aborigines in towns;

(g) co-ordinating and making claims to vacant Crown lands;

(h) making representations to the Land Commission about priorities in the expenditures of monies for land purchase and land development;
(i) nominating appropriate trustees to hold land for Aborigines;

(j) providing administrative services to such trustees and directing them in the performance of their duties wherever necessary;

(k) conciliating disputes between Aboriginal groups or communities over matters concerning land ownership or usage; and

(l) issuing entry permits to non-Aborigines visiting Aboriginal land and arranging for rangers and others to check that the permit system is observed.

Woodward proposed a very sweeping mandate for the land councils, one that would give them a great deal of political leverage in the Territory. His recommendations were incorporated with little modification in the 1976 Land Rights Act.

The three land councils formed by the Act and subsequent amendments - the Northern Land Council (NLC), the Central Land Council (CLC), and the Tiwi Land Council (TLC) - are corporate bodies comprised of Aboriginals in the area of the particular land council. They are, moreover, corporate bodies with statutory responsibilities. The Act defines two main functions for the land councils: 'to ascertain and express the wishes of Aborigines living in the Land Council areas and to protect the interests of traditional Aboriginal owners.' Of great importance, the councils were to prepare, lodge and present land claims, and to negotiate on behalf of traditional owners with respect to mineral exploration and development. While ownership of Aboriginal land resided in land trusts, all decisions regarding Aboriginal land were to be made by the land councils (Toohey 1985, 169). The land trusts could act only on instructions from the appropriate land council. Through the power to grant permits for entry to Aboriginal land, the land councils were drawn into the more general administration of Aboriginal land including issues relating to sacred sites, roads, cattle, fencing, incorporation of Aboriginal groups, brands, bushfire control, soil conservation, feral animals, and stock disease (Howie 1981, 36).

The Northern Land Council is composed of 79 individuals chosen as representatives by fifty Aboriginal communities at the Top End. (The NLC originally represented Bathurst and Melville Islands as well, but this area is now covered by the Tiwi Land Council.) Some of the larger or more complex communities - Daly River, Galiwinku, Maningrida - have up to
four members on the Council in order to capture the diversity of interests lodged within the community. Headquartered in Darwin, the NLC meets approximately every three months, with a ten member executive committee, elected by the Council, meeting at three-month intervals between Council meetings. The Bureau, or managerial arm of the NLC, includes branches dealing with administration, training, field operations (including 30 officers located throughout the Top End in order to keep the Bureau in contact with the owners of and claimants to Aboriginal land), legal affairs, land management, communications, and anthropological research. As Table 6.1 shows, the NLC is a substantial organisation with income and expenditures exceeding five million dollars by 1985 (NLC Annual Reports). In 1984 over $1,800,000 was paid out by the NLC in salaries along with close to $500,000 in consultant fees and associated costs.

Table 6.1
Income and Expenditures For the NLC, 1981-1984

<table>
<thead>
<tr>
<th>Year</th>
<th>Income</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>$1,727,475</td>
<td>$1,481,793</td>
</tr>
<tr>
<td>1982</td>
<td>2,446,350</td>
<td>2,555,668</td>
</tr>
<tr>
<td>1983</td>
<td>4,144,050</td>
<td>3,602,645</td>
</tr>
<tr>
<td>1984</td>
<td>4,045,867</td>
<td>4,316,902</td>
</tr>
<tr>
<td>1985</td>
<td>5,306,968</td>
<td>5,367,491</td>
</tr>
</tbody>
</table>

Source: NLC Annual Reports

The Central Land Council, based in Alice Springs, was first established in 1974 although it has organisational roots going back to the walk-off of Gurindji Aborigines from the Wave Hill Station in 1967, and to the Central Australian Aboriginal Legal Aid Service (Eames 1983, 268). The CLC now has 76 members nominated by 52 Aboriginal communities spread over more than 60 per cent of the NT. Like the NLC, the CLC meets four times a year, with monthly meetings of the Executive (elected by the Council) and weekly meetings of the Planning and Management Committee presided over by the Chairman of the CLC. The Chairman 'acts as the guardian of the Aboriginality of the Council's approach to its functions, and the style and structure of its organisation' (CLC Fifth Annual Report 1984-85, 12). The organisational structure of the CLC is similar to that of the NLC with specialised information and education, legal, research, and administrative divisions, although in operational style the CLC tends to be less bureaucratic than the NLC (Altman and Dillon 1987, 8). While the CLC's budget is smaller than
that of the NLC, Table 6.2 shows that it is considerable nonetheless. In the last fiscal year for which details are available, the CLC paid out over $1,300,000 in salaries and wages, along with $585,000 in consulting fees.

Table 6.2

Income and Expenditures for the CLC, 1981-1984

<table>
<thead>
<tr>
<th>Year ending June</th>
<th>Income</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>$1,055,508</td>
<td>$ 789,853</td>
</tr>
<tr>
<td>1982</td>
<td>1,593,279</td>
<td>1,146,213</td>
</tr>
<tr>
<td>1983</td>
<td>1,868,056</td>
<td>1,464,193</td>
</tr>
<tr>
<td>1984</td>
<td>2,596,618</td>
<td>1,958,705</td>
</tr>
<tr>
<td>1985</td>
<td>2,735,655</td>
<td>2,991,526</td>
</tr>
<tr>
<td>1986</td>
<td>4,230,556</td>
<td>2,926,925</td>
</tr>
</tbody>
</table>

Source: CLC Annual Reports, 1981/82-1985/86

The Land Rights Act provides the land councils with some of the prerequisites of government. The three councils have among them a land base potentially comprising close to 50 per cent of the Territory land mass, although only in the case of the TLC is it a contiguous land base. Admittedly, the councils do not own the land, but the Land Trusts which do are simply title-holding bodies which can only act under the direction of a land council, which in turn must act with the consent of traditional owners.

The Land Rights Act also gives the councils real power, not just political influence, through their statutory responsibilities. The councils have the power to decide whether or not mineral exploration takes place on Aboriginal land. While this power can only be exercised after the traditional owners of the relevant land have been identified and consulted, and after any Aboriginal group or community which may be affected by the development has been consulted and has had adequate opportunity to express its views, the power remains a significant one nonetheless. The councils also have the power to negotiate the terms under which mineral exploration and development may proceed, and the compensation that will be paid. In this last respect, the councils are free to negotiate royalty payments exceeding the statutory royalties set forth in the Territory's Mining Act. Combined with the veto, this gives the councils a formidable bargaining position in negotiations with mining
companies. The councils can deny access to Aboriginal land, or set conditions on that access. In short, the councils exercise political control over Aboriginal land, although that control is not exclusive.

The power of the land councils is nicely illustrated by reference to Tatz, who over the years has been an outspoken critic of limited Aboriginal access to political power. Tatz (1972, 103) described early Aboriginal consultative mechanisms as 'toy telephones', instruments into which Aborigines could speak, but at the other end of which there was no one to listen. His assessment of the land councils, however, is much more positive (1980, 290):

the legal existence of the Council has made it a body of account, an organisation of men to be accommodated to, to be reckoned with. Unlike all other white-created Aboriginal organisations before it, it has the structure and the base to use legal processes to protect itself and to assert the rights of its members.

The Land Rights Act also provides the land councils with an independent source of funding, subject of course to the Act being amended or patriated. In his second report, Justice Woodward had recommended that the land councils receive secure and untied government funds, and that government control of land council expenditures be as relaxed as possible (1974, paragraph 58):

It is important that Aboriginal communities should have as much autonomy as possible in running their own affairs. They should receive, without having to account for them except by way of audit, the necessary funds to cover all administration and other normal recurrent expenditures. Only major decisions involving the expenditure of public monies should have to be approved by outside authority.

The Land Rights Act operationalised Woodward's recommendation by providing funding for the councils from royalties paid for mineral extraction on Aboriginal land. Such royalties are paid by the mining companies to the NT government, with an equivalent amount then being paid by the Commonwealth government to the Aboriginals Benefit Trust Account (ABTA). Forty per cent of the royalties paid into the ABTA are assigned by the Act to the land councils to meet their administrative costs, 30 per cent are distributed to royalty associations in communities directly affected by the mineral operation (to date only the NLC has had such funds to distribute), and 30 per cent of the Royalties are potentially available to benefit NT Aborigines generally.
The first claim on this last 30 per cent, however, is any land council expenditure exceeding the initial 40 per cent. If the ABTA payments are not sufficient to meet land council expenditures, the Minister of Aboriginal Affairs may at his discretion authorise advances from Consolidated Revenue to meet any shortfall. To date, this has been the rule rather than the exception. In 1979/80 land council expenditures totalled 66 per cent of all royalty payments; in 1980/81 they totalled 49 per cent, in 1981/82 66 per cent, and 1982/83 42 per cent (Altman unpublished, 18). If the councils do not use their 40 per cent of mineral royalties, any surplus is to be distributed within six months to Aboriginal councils in the areas affected by mineral exploitation. To date, only the TLC has had surplus funds to distribute.

As Altman and Peterson (1984, 47) point out, 'the automatic payment of royalty equivalents to Aborigines relieves them of the burden of becoming annual petitioners for funds from the Commonwealth.' It also means, however, that a potential tension exists between the land councils, which rely on mineral royalties, and the traditional owners who may not want mineral development to proceed (Vachon and Toyne 1983, 308).

In summary, the Land Rights Act gives the land councils a land base over which they exercise a very considerable degree of control, statutory responsibilities which translate into real political power, and a funding base that is largely independent from the Commonwealth or NT governments. Admittedly, land council budgets are still subject to ministerial approval, supplementary funding is still required, and the Commonwealth government may still permit mineral exploration on Aboriginal land to proceed despite land council objections if the Governor General declares by Proclamation that such exploration is essential to the national interest. (In both Canada and the United States, Indians have an absolute veto over mineral exploration and/or development which cannot be overridden in the national interest.) Nevertheless, the Land Rights Act created an embryonic form of Aboriginal government in the land councils. Whereas in national politics Aborigines have very little influence, much less power, the land councils in the NT exercise tangible political power on behalf of their members.

Peterson (1981, 10) has argued that

only by creating rights which draw whites into negotiations with Aborigines on equal terms, which provide Aborigines with levels of funding that allow them to pursue self-defined goals and which establish structures
in relation to land that are capable of independent action, is any effective and non-assimilatory resolution of the problems Aborigines and whites pose for each other likely to be reached.

To a considerable extent, the NT land councils meet these conditions.

The Political Role of Land Councils

Democratic systems work best when group interests are aggregated and articulated within the political process. When this fails to happen spontaneously, when for whatever reasons groups are unable to come together and effectively promote their case, governments often intervene to provide organisational and financial assistance.

A good example of this is provided by the events surrounding the Canadian government's 1969 White Paper on Indian policy, which called for the abolition of Indians' legal status and the privatisation of Indian land. (For a detailed discussion see Weaver 1980.) Prior to the publication of the paper, federal officials thought they had a reasonable grasp of Indian opinion and policy preferences. However, following the vehement rejection of the White Paper by Indian leaders and, eventually, by Indians generally, the federal government decided that in fact it had not correctly read Indian opinion. The mistaken assumptions of the White Paper were attributed to a lack of effective Indian political organisations; the government did not know what Indians thought because there was no national Indian organisation to tell them, no organisation that could aggregate Indian opinion and articulate it within the political process. Thus the government moved to provide core funding for the National Indian Brotherhood in order to create a full-fledged political organisation which could speak on behalf of Canadian Indians. Similar funding was also made available to other Aboriginal groups within the country.

In the Northern Territory, individual Aboriginal communities are too small and too resource-poor to mount political organisations which could deal effectively with the Territory and Commonwealth governments. The communities, however, still lie exposed to the policies and spending priorities of the two governments. They still confront massive intrusion from the encompassing Territory and national societies. In many cases they are confronted with proposals for resource development backed by both private and public enterprises commanding vast financial, legal and public relations resources. In short, Aboriginal communities face a rather daunting task, one that
outstrips the resources that they are individually able to command.

Note, for example, Tatz's conclusions in his report on Aborigines and Uranium (1984, 300):

for Aborigines to become equal participants in [the uranium] mining industry, they need to understand the necessary bureaucratic and legal structures, modern industrial economies, western technology, uranium as a nuclear fuel and as a weapon of war, the system of Territory and of national politics, [and] global strategies between the nuclear and non-nuclear nations.

Such understanding is simply beyond the grasp of small, traditional Aboriginal communities, and indeed beyond the grasp of any small community, because of the limited human resources that they can command.

It is essential, then, that Aboriginal communities pool their political resources and expertise. This can be done, and to a limited extent is being done, through regional Aboriginal organisations. The Gagudju and Kunwinjku Associations, for example, '... provide a first corporate basis for regional planning and the creation of a higher order of decision-making than that involved in family, community, or local council life' (Tatz 1984, 294). (In Canada, it is being accomplished by Indian self-government proposals which span a number of bands; the Department of Indian Affairs is presently considering 40 self-government proposals incorporating 139 separate bands.) It can also be done, and probably done more effectively, through the land councils. Even in the case of the Gagudju and Kunwinjku Associations, the land councils are necessarily involved, as Tatz (1984, 294-5) explains:

Because they must make decisions about mining, the Aboriginal people in the Region must deal with, and through, the Northern Land Council. That body, in turn, engages in Territory affairs and in the national political arena. Directly and indirectly, local Aborigines are being escalated into higher orders of institutional politics; yet, ironically, they remain unaware of the institutions involved, their linkages, modes of procedure, interests, functions, and performances.

Whether this lack of awareness on the part of individual Aborigines should be seen as a matter of concern is open to debate, as it is certainly a lack of awareness shared by the general Australian public. It is clear,
however, that the Aboriginal community as a whole must command such an awareness, and must possess the organisational resources to participate effectively in the larger political order. It is here that the land councils have a critically important role to play. They become the hired guns of the Aboriginal community, dealing with a political and bureaucratic world that is too complex for most individual Aborigines, and most individual Australians, to understand, much less influence.

The land councils work at the interface between Aboriginal communities and the larger political process. Thus they must be in step with traditional Aboriginal communities, yet have the knowledge and resources to deal with a great variety of non-Aboriginal political actors, bureaucratic organisations, and private enterprises. Aboriginal affairs has become an extremely complex policy domain encompassing all three levels of government, a host of bureaucratic agencies, boards and councils, and a host of private interests. It is a domain which individual Aboriginal communities enter at considerable peril.

The interface at which the land councils operate is thoroughly entangled in intergovernmental affairs as both the Commonwealth and Territory governments, and at times municipal governments, are brought into play. As Holmes and Sharman (1977, 137) point out, '... the real action in Australia takes place at the intergovernmental face rather than on the party parliamentary benches, i.e. in premiers conferences and Loan Council meetings, in face-to-face contact between federal and state government departments and agencies, and in the multitude of transactions that go to make up the strategies of "co-operative federalism"'. In this arena, Aboriginal communities are very dependent upon the political resources pooled in and mobilised through the land councils, although organisations such as the Aboriginal Development Commission also play an important role.

The land councils have come to play an important role at the bureaucratic interface by providing Aboriginal representation on a wide variety of government boards, agencies and consultative committees. The councils greatly simplify any agency's search for suitable and politically acceptable Aboriginal representatives. Rather than making the selection themselves from a very heterogeneous and perhaps unfamiliar Aboriginal community, agencies can informally delegate the selection to the land councils or simply provide for land council representation per se.

For example, the NT Conservation Commission has an eight member board, not less than two of whom must be Aboriginals
domiciled in the Territory. At the present time the chairman of the NLC and a former chairman of the CLC are serving members. The NT legislation which established the Aboriginal Sacred Sites Protection Authority requires that seven of the twelve members of the Authority be Aborigines selected from nominations submitted by the land councils. The three land councils are represented on the Bilingual Education Consultative Committee, the Tourism Advisory Council, and the NT Parks and Wildlife Commission Advisory Council. By being woven into the bureaucratic structure of the NT government, the land councils are further legitimised as the spokesmen for Aboriginal interests within the Territory. Their political role is enhanced, as is their ability to promote Aboriginal interests and perspectives within the political system.

The land councils perform a variety of other political roles. They serve as a buffer between Aboriginal communities and the larger world, providing a shelter of political expertise and organisational resources. Of critical importance here is the Land Rights Act which requires that mining companies work through the land councils rather than directly with the potentially affected Aboriginal communities. The councils provide a vehicle for electoral education by distributing information on voting procedures and on the importance of the vote. They enhance the Aboriginal profile in the press, an example here being the weekly column in the *Sunday Territorian* written by the NLC's chairman, Galarrawuy Yunupingu, and published alongside the columns written by the Chief Minister and the Leader of the Opposition. The land councils also provide a voice for NT Aborigines in national Aboriginal affairs through their participation in forums such as the National Federation of Land Councils, presently chaired by the CLC's Pat Dodson.

The land councils, then, are full-fledged political organisations. While their legislative mandate may preclude them from taking a party role in Territory or Commonwealth elections, this prohibition provides little practical constraint on their political activities. The councils can play a vigorous role in the debate on issues during an election campaign, as they did in 1987 by officially criticising the NT government statehood policy. Although the land councils have no direct role to play for urban Aborigines comparable to that played for Aborigines living in traditional communities, they still provide an important political voice for urban Aborigines. For all Aborigines in the Territory, they provide a symbol of Aboriginal influence and power. At the same time, however, the land councils stop short of being Aboriginal governments. Whether they might move towards government status, as the NT moves towards statehood, is the question to which we now turn.
The Land Councils and Aboriginal Self-Government

In his extended analysis of the statehood issue in the Northern Territory, Tappere (1987, 40) makes the important point that 'there is no reason why a State itself might not be a mini-federation'. The NT could adopt a constitutional framework within which some legislative powers were assigned to Aboriginal governments, just as within the Australian Constitution some legislative powers are assigned to the States. Within a limited domain, Aboriginal governments would be able to exercise legislative authority unfettered by the NT Legislative Assembly.

To a degree the Land Rights Act already places Aboriginal communities in this position by giving such communities extensive and in some respects exclusive control over Aboriginal land. The creation of a federal form of Aboriginal self-government would recognise this control in the new state constitution, and perhaps extend it to other areas deemed to be of particular importance to Aboriginal communities such as social services, the administration of justice, cultural policy, education and economic development. In essence, the scope and autonomy of Aboriginal government would be constitutionally defined, albeit within the constitution of the NT rather than within the Commonwealth constitution.

In this respect, Hanks (1984, 37) has discussed the devolution of legislative power by the Commonwealth government:

Is the Commonwealth prepared to use its substantial powers in a way which responds to one of the most serious problems in Aboriginal society: powerlessness, the inability to influence (let alone control) the political decisions which impose on Aborigines inappropriate and counterproductive programs in such fundamental areas as health, housing, education and land use?

Given, however, the contemporary debate on statehood for the NT, it seems more appropriate to consider first the constitutional relationship that Aboriginal governments might develop with the new NT state. The devolution of power from the Commonwealth government is of secondary concern. Perhaps more important, the devolution of Commonwealth powers to Aboriginal governments would be likely to evoke an extremely hostile response from the NT government, particularly if such powers included things normally falling under the umbrella of state governments.

The devolution of legislative autonomy to Aboriginal governments, of course, would make little sense unless those
governments were also able to exercise a comparable degree of fiscal autonomy. Here Mowbray and Shain's statement (1986, 111) with respect to community government in the NT has more general applicability:

the major channel for government control ... is not in the legislation itself, but in the financial arrangements that determine the scope and impact of council activities. These involve both the absolute amount of funds transferred as well as the extent to which they are tied to specific uses.

Certainly at the present time the land councils face quite extensive ministerial control over their financial activities.

At issue here is not only whether Aboriginal governments will have the power to raise their own revenue – to tax – but whether Aboriginal communities are capable of generating any significant and stable revenue flow. (The inability of Aboriginal communities to finance themselves is a disability that they share with the Territory as a whole.) It should also be kept in mind that even state governments in Australia do not enjoy a great deal of fiscal autonomy. It would be unrealistic to expect Aboriginal governments to enjoy more fiscal autonomy vis-a-vis the NT government than the NT government would enjoy in turn from the Commonwealth.

At the present time, the land councils are unable to accumulate financial resources, to amass a body of capital that might then be used for economic development and to increase their financial independence (Altman 1983, 97). The land councils are required to distribute any surplus funds, although to date surplus funds have not posed much of a problem for the NLC and CLC, as they have not posed a problem for community governments. If, however, the land councils are to take on a more governmental role in the future, such financial control may be essential.

The picture of self-governing Aboriginal communities, embedded within the NT state yet exercising constitutionally defined powers of reasonable legislative scope and with a reasonable degree of fiscal autonomy, may strike some readers as an attractive one. Its realisation, however, faces two very large hurdles.

In the first place, it is clear from the discussion in Chapter Five that virtually all if not all Aboriginal communities are simply too small to carry such governments. Thus the realisation of any federal form of Aboriginal self-government requires a much larger population base than that provided by existing Aboriginal communities. Indeed, it is
likely that the population and territorial base encompassed by the existing land councils is about as small as one could get and still have Aboriginal governments of reasonable autonomy and scope. It is for this reason that the land councils can be seen as embryonic Aboriginal governments; not because they are presently acting as governments, but because they and they alone encompass the necessary resource base.

Second, if the land councils are to take on the features of governments, they will have to have the power to impose decisions upon their constituent communities. In other words, individual Aboriginal communities will have to be prepared to sacrifice some measure of their own autonomy to the larger Aboriginal government. This will not be easy to accomplish given the diversity of the Aboriginal community, the disparity in wealth across communities, and the lack of any traditional foundation for representative government. We will return to these points shortly.

Aboriginal Sovereignty

The discussion of federal models of Aboriginal self-government inevitably brings up the issue of Aboriginal sovereignty. Although, as Pittock (1979, 29) pointed out, Aborigines were rarely considered by most Australians to have sovereign powers akin to those of the Indian 'nations' of North America, '... the recent and gradual recognition of Aboriginal land and mineral rights, and the granting of local self-government in varying degrees has implicitly raised this issue.' Since the time of Pittock's comment, the pursuit of sovereignty has become an important if somewhat ill-defined part of Aboriginal political rhetoric, one shared with Aboriginal groups across the Fourth World.

Aborigines have sought recognition of Aboriginal sovereignty both before European settlement and as an ongoing political principle. While Canadian Indians argue that the treaties they signed with the Crown explicitly recognised Indian sovereignty, as treaties can only be reached between sovereign powers, Australian Aborigines argue that because they did not sign treaties, their innate sovereignty was never surrendered. Examples of the Aboriginal emphasis on sovereignty are not difficult to find. Note, for example, a recent pre-election column in the Sunday Territorian (31 May 1987) by NLC Chairman Galarrwuy Yunupingu:

We're looking for full recognition of our sovereignty. We don't want half-baked 'Makarratta' treaties. We don't want citizenship or land rights by legislation. We want guarantees from the constitution and the security that will
bring us as the basis of our self-determination. It's not as if that is impossible. Other nations with indigenous minorities have done it ....

Come on Labor. It's time. It's time you showed your maturity by starting serious negotiations with Aboriginal people, negotiations which must lead to recognition of Aboriginal sovereignty and the need for true Aboriginal self-determination.

Yunupingu's column reflects a statement released by the National Federation of Land Councils on February 22, 1985:

Since the beginning of time, the Aboriginal nation comprising of different Aboriginal language groups, has maintained the economic, social and political sovereignty of this country, now known as Australia. The British law 'Terra Nullius' is considered by Aboriginal people today as nothing more than an imperialist legal fiction to justify British theft and genocide and a doctrine that cannot be applied to this continent which is still occupied by Aboriginal groups with clearly defined systems of law including laws relating to land.

Mention should also be made here of Tasmanian Aboriginal activist Michael Mansell, whose recent argument that trade with Libya could provide a means of assuring Aboriginal sovereignty in Australia (Northern Territory News, 23 May 1987), has probably done more damage to public support for Aboriginal people than any single act in the past decade.

Whenever the issue of Aboriginal sovereignty has arisen, the Commonwealth government has been quick to respond. The government has adamantly opposed any recognition of political sovereignty for Aboriginal people, being much more emphatic in its rejection than national governments have been in Canada or the United States. The pointman in the Commonwealth's attack on Aboriginal sovereignty has been Clyde Holding, Minister of Aboriginal Affairs in the Labor government until July 1987. Note, for example, the Minister's speech in Parliament on 8 December 1983:

Mr. Speaker, there is no issue of sovereignty and I have made it clear to Aboriginal people that neither the grant of land rights, nor the recognition of Aboriginal prior occupation and ownership, in any way puts Australian sovereignty in question. Given the opportunity, Aboriginal people will make their own future as citizens of the Australian nation, as we all shall. Sovereignty is vested in the Crown and Parliament,
for a single people united in the Commonwealth. The people who are so united under the Crown are all Australians. These matters are not in question.

In a speech two years later to the National Press Club (13 September 1985), Holding was if anything even more emphatic:

We also have to understand the anger and even aggression of many younger Aboriginal people. It is hardly surprising that some take up the rhetoric of the Third World. It is equally understandable that some have espoused notions of 'sovereignty' separate and apart from that of the Commonwealth of Australia.

But I feel compelled to point out again that the question of sovereignty is not at issue. Many Aboriginal veterans have already made it clear that Aboriginal people are citizens of Australia in every sense of that word. No less than other Australians, Aborigines owe allegiance to Australia....

Nor does the Government accept any notion of residual sovereignty, implying that, in some way, the sovereign Australian nation can or should deal with some imagined 'Aboriginal nation' on some matters.

Holding's rejection of Aboriginal sovereignty coincides with an opposition to racial governments that is deeply entrenched within the Australian public. Opposition to 'Apartheid' in any form has become such a consensual value, both in Australia and in other western democratic countries, that it will inevitably spill over into any public assessment of Aboriginal governments in Australia. Note, for example, the language used (Mining Review, March 1982) in the Australian Mining Industry Council's opposition to Aboriginal land rights, much less self-government:

Surely Australia does not need legislation which unnecessarily, or on too large a scale, divides its people according to race. Yet the Federal Land Rights Act seems designed to do just that by the creation of enormous enclaves for small groups of Aborigines where the rules in force are radically different from those applying elsewhere. Separate development under separate laws on racial grounds, whether the objective be to keep people in or to keep others out, is a concept which most Australians profess to abhor.
While I have no desire to endorse the AMIC's position on Aboriginal land rights, there is no question in my mind that the passage cited above captures the strategic high ground in the rhetorical debate. In a country where the national culture stresses the ethos of one people and one community, racially-bounded governments will be very difficult for the public to accept.

Yet the fact remains that federal forms of Aboriginal self-government would recognise Aboriginal sovereignty, or at least would do so implicitly. Unlike municipal models, in which Aboriginal governments exercise only delegated authority, federal forms of Aboriginal self-government are based on a constitutionally-defined division of powers. Within their own legislative domain Aboriginal governments would be sovereign, as are state governments, albeit subject to the same 'national interest' qualifications and fiscal constraints that state governments face. Federal forms of government are based on divided sovereignty rather than the monolithic sovereignty that Holding describes. This does not mean, however, that citizenship is also divided. In all federal states with which I am familiar, the conferring of citizenship is a power that resides with the national government. One is a citizen of Australia and a resident of New South Wales, a citizen of Canada and a resident of Ontario. Thus federal forms of Aboriginal self-government need not imply that Aborigines would be any less Australian citizens than other Australians.

It may be that federal forms of Aboriginal self-government will come as close to a formal recognition of Aboriginal sovereignty as Aborigines can hope to achieve. Certainly it would be a form of recognition more in keeping with the Australian political culture, than would be a formal statement explicitly recognising Aboriginal sovereignty in any more global sense. Indeed, the vast majority of Australians would probably never even notice the recognition of Aboriginal sovereignty that would be implicit in federal forms of Aboriginal self-government, and thus it is unlikely that any significant public opposition would be mobilised. While such implicit recognition would undoubtedly be less than many Aboriginal activists would like to see, it may well be the most that could be achieved given the constraints of the Australian political culture.

Before leaving this discussion, four additional points should be made. The first is that the formal recognition of Aboriginal sovereignty is not essential for the protection of Aboriginal interests. As McGill and Crouch (1986, 13) point out in their comparative analysis of Aboriginal resource rights in Australia, Canada and the United States:
no legal presuppositions such as Aboriginal sovereignty are necessary in order for the recognition of Aboriginal resource rights comparable with Indians.... Although such concepts have enhanced the historical and ongoing bargaining power of Indians, the extent to which resource rights are recognised simply reflects the political will expressed through parliamentary institutions .... sovereignty is not a necessary legal pre-condition for strong resource rights, nor is it the source of a relevant distinction between the USA and Australia. It is simply a practical support for bargaining power.

Second, recent public opinion research in Canada (Ponting 1987) suggests that individual Australians may be more favourably predisposed towards Aboriginal government than towards Aboriginal rights, although 'more favourably' may still be far removed from positive support. At least in the Canadian context, the general public is more comfortable with the notion of Indian self-government than with the notion of special rights that Indians would possess as individuals. Third, it should be noted that the formal recognition of Aboriginal sovereignty does not lie within the power of state governments (Seaman 1984, 9). Thus it is not an issue that the NT Legislative Assembly can itself address. Finally, it should be stressed that the contemporary political environment is not one that is favourably disposed to any significant movement on the sovereignty question. If anything, Aboriginal interests are on the defensive rather than being in a position to advance on the sovereignty issue.

Land Councils Under Attack

At the very best, the land councils have a checkered reputation among the non-Aboriginal residents of the Territory. The redistribution of political power that the land councils represent and their Commonwealth charter have been resented by many Territorians (Howie 1981, 45). Certainly CLP politicians in the Territory have never been enamoured of the land councils (Eames 1983, 270-73), recognising them as a much more formidable political opponent than the relatively small, isolated and generally resource-poor Aboriginal communities. The mining industry and large segments of the general public have seen the councils as obstructionist in their approach to mineral exploration and development, and the land councils have spearheaded a number of unpopular Aboriginal land claims. It is also fair to conclude that the forceful advocacy of the land councils, and the ideological packaging of that advocacy, have irritated many Territorians.
It should not be surprising, then, that the land councils come under frequent political attack from their opponents. Nor should it be a matter of particular concern. What is important to note is that the land councils are not only open to attack but are also very vulnerable to attack given a number of structural problems in their own internal organisation.

As noted earlier, the land councils are not rooted in traditional patterns of Aboriginal political organisation. They are much closer in structure and operational style to conventional interest groups than to any Aboriginal archetype. Of particular importance is the lack of Aboriginal experience with representative government. Traditional Aboriginal leadership is not representative leadership; leadership is personal and direct. This causes what can be an acute problem for the land councils. As Altman (1983, 94) explains, '... delegates in the two large pan-Northern Territory Aboriginal organisations are required to protect the land interests of individual clans, yet under traditional Aboriginal practice only clan elders can talk for that country'. Here Justice Toohey notes (1985, 169) that:

The Northern and Central Land Councils cover a vast expanse of country, occupied by many people from different linguistic and tribal groups and from a multiplicity of land holding groups. As those councils have found, it is hard for a land council to be truly representative of all those within its jurisdiction.

As a consequence, the councils face constant internal tension. It is extraordinarily difficult to create stable political institutions that will effectively represent, and be seen to represent, the multitude of family, linguistic and land-holding groups that fall within the NLC or CLC. This problem already faces individual communities (eg. Symanski 1987) and community governments, and it will only increase as the size of the government unit increases. And yet without government units of a reasonable size, a size much larger than existing communities, effective self-government will not be possible.

Representational problems are exacerbated by the fact that different Aboriginal communities face quite different developmental opportunities. The agricultural and pastoral potential of most Aboriginal land is very limited, as it is for most of the NT (Duncan 1967; Heatley 1979, 15). As Mowbray (1986, 16) notes:

the substantial tracts of land that many communities now own is still only a minor economic
resource - with low stock carrying capacity and little or no agricultural potential. People were often settled on land because of its low value and poor productive prospects. The same reasons lay behind the fact that land remained unalienated and, hence, open to land claims.

In some cases, of course, 'mistakes' were made. Just prior to the establishment of the Arnhem Land Reserve in 1928, Chief Protector J.W. Bleakley wrote: 'There should be no obstacle to this [proposed reserve] as the country is very poor, no one requires it, and those who previously have taken up some of it have abandoned it' (Cited in Budden 1982, 2). Over time, however, Arnhem Land has proven rich in mineral wealth and tourist potential.

What is important, though, is not the good fortune of a few communities but the economic variation across communities, variation considerably greater than that found across states or across most non-Aboriginal communities. It will not be easy for large-scale Aboriginal governments to make political decisions, and to have those decisions accepted as legitimate, fair and authoritative, when community circumstances vary so much. This is particularly the case with respect to redistributive issues where, for example, prosperous communities may be required to carry some of the load for less prosperous communities. In the absence of a strong pan-Territory sense of Aboriginality, the difficulties could be immense. How can a uniform policy be formed on tourism, for example, when most communities may have little or no tourist potential while a few have a great deal of potential? Or on uranium mining, when uranium resources are lodged within the areas of a few isolated communities?

As the land councils wrestle with representational problems, they become exposed to external attack. Critics can charge that the councils are failing to represent accurately grassroots opinion, or are failing to represent the views and interests of particular communities. All such charges are bound to be borne out in some circumstances. Thus the argument can be made that if the land councils today fail to perform satisfactorily as representative bodies, how can they be entrusted with greater responsibility and power in the future? This is not an easy criticism to address because the representational problems faced by the land councils are very real and very serious.

The land councils are also open to attack for their reliance on white advisors and support staff. While this is a problem that will diminish with time, the councils remain open to the charge that their viewpoint reflects the views of white advisors rather than their traditional communities.
This charge is perhaps most credible when it comes to the ideological packaging of some land council policy statements and position papers.

As stated above, the fact that the land councils are vulnerable to political attack may not seem like a matter of great concern. No one, after all, should expect immunity in the political arena. However, the vulnerability of the land councils takes on greater importance when we consider the threat that statehood for the NT could pose for the survival of the land councils.

The Land Councils and Statehood

As discussed in Chapter Three, statehood for the NT may not pose an acute threat to Aboriginal land rights. It is very likely that land rights will be protected in any statehood package, although that protection may not be as extensive or as secure as Aborigines might like. The more acute threat of statehood is to the land councils themselves and therefore, if the above analysis holds, to the long term prospects of Aboriginal self-government. The fact that the land councils do not themselves own Aboriginal land could enable a new state government or state constitution to protect, or at least appear to protect, land rights while neutering the land councils.

The land councils, it will be recalled, are creatures of the Aboriginal Land Rights (Northern Territory) Act 1976. The Land Rights Act is Commonwealth legislation, and it is unlikely to survive statehood. The odds are that it will be patriated to the NT either prior to or as a consequence of statehood, or that it will be replaced by similar although by no means identical NT legislation. What, then, will be the fate of the land councils? Will NT legislation extend the same mandate to the councils that they presently enjoy? Or will patriation be seized as an opportunity to re-write the legislation with respect to the land councils? If the land councils are given a state charter, will such a charter protect the political position of the councils? As creatures of state legislation, will they be in a weaker position vis-a-vis the state government than they presently are as creatures of the Commonwealth government vis-a-vis the Territory government?

While it is unlikely that the land councils would be disbanded as a consequence of statehood, they are open to change in a number of important ways. It would be possible, for example, to weaken the land councils by carving additional councils out of the CLC and NLC. This could be justified by arguing that it would bring the councils into closer touch with the traditional owners of the land, an argument that would take on additional weight should land
councils be encountering the types of representational problems discussed above. It is not at all unlikely that a move to create more and smaller land councils would be supported by some traditional communities who were unhappy with their representation within the council, and thus that the move could be sold as one designed to meet Aboriginal demands for more representative councils (Altman, 1983, 96). As Altman also points out (1983, 100), mineral royalties can only be distributed within the land council area, and therefore '... the smaller a land council, the narrower is the spread of affected area royalties.' Thus smaller councils may appeal to communities which receive royalties and which are unwilling to see those dispersed in whole or in part across the broader Aboriginal community.

When the land councils were first proposed, Justice Woodward (1973, 41) noted two principal disadvantages of establishing councils smaller than the NLC or CLC:

(a) the extreme difficulty in drawing satisfactory dividing lines between communities when tribal groups are divided between several different communities, and

(b) the difficulty of providing adequate independent advice and support for a number of regions at the same time.

These two disadvantages, I would argue, still pertain although the second can be recast in terms of smaller land councils being unable to amass enough organisational resources to exercise significant leverage on the NT political system. However, it is by no means certain that these will be seen as compelling disadvantages by those sceptical of the value of land councils in the first place, or by Aboriginal communities concerned with their interests being lost in the shuffle of a large and often unwieldy political organisation.

In its position paper Towards Statehood: Land Matters Upon Statehood, the NT government addresses the future of the land councils should statehood be accompanied by more flexible forms of Aboriginal land tenure:

the existing powers of Land Councils warrant consideration in this context. If a flexible approach is to be adopted, this would include consideration as to whether the contractual and consent powers and powers of direction of Land Councils in the present Act in relation to Aboriginal land could be passed over to the Trustees or to the traditional owners at the appropriate time.
Such a transfer of powers would gut the political power of the land councils. Whether this is the intention of the government's proposal is not clear.

Finally, it should be noted that the land councils exist as instrumentalities of the Land Rights Act and receive their funding through provisions of that Act. DAA also provides funding over and above the revenue provided by royalties from mineral development on Aboriginal land. Should the Act be patriated to the Territory as a consequence of statehood, the fate of the funding provisions and thus the fate of the land councils would not be at all certain. In this event, the councils would be tied financially to the NT state government. In this case, it could be expected that the NT government would use its new financial lever to encourage the councils to adopt a more facilitative approach to mineral development. If the NT government was not prepared to make additional funding available, the land councils could have little choice in this respect.

It should be stressed that the changes discussed in this section could all be accomplished quite independently from the granting of statehood to the NT. They could be accomplished by changes to the existing Land Rights Act, changes initiated and enacted by the Commonwealth government and with which the NT government may or may not agree. For example, in the 1987 Commonwealth election the CLP candidate for the Territory's seat in the House of Representatives, Peter Paroulakis, stated that a Commonwealth government led by John Howard would amend the Land Rights Act to prevent any further claims being lodged, to remove the Aboriginal veto power over mineral exploration, to review the role and function of the land councils, and to simplify procedures by which smaller land councils could be established (Sunday Territorian 21 June 1987). Statehood, then, provides an opportunity, but by no means the only opportunity, to curtail the political power of the land councils.

Here we should also note Mowbray and Shain's argument (1986, 109-10) that the community government legislation threatens the political position of the land councils by giving community government councils the power to make decisions with respect to Aboriginal land, a power that the authors maintain was given to the Land Trusts and Land Councils by the Land Rights Act. If the Land Rights Act is patriated to the Territory, any discrepancy between it and the Local Government Act could be removed by amendments to the former Act, amendments which would further weaken the land councils.
CHAPTER SEVEN
CONCLUSIONS

In Chapter Three, the argument was made that statehood poses a generalised threat to Aboriginal interests in the Northern Territory, an argument that may admittedly be contentious. However, it is less contentious to argue that statehood poses a specific threat to the land councils. Yet if the analysis in Chapter Six is correct, any move to weaken the land councils will also weaken the Aboriginal voice within the Territory's political arena. Any such loss, moreover, will not be offset by Aboriginal electoral power (Chapter Four) or by community government councils (Chapter Five). The Territory's Aborigines will be left with a political voice splintered across individual members of the electorate or across a plethora of community councils, none of which will possess the political resources presently commanded by the land councils. Statehood combined with a diminution of the land councils would shift political power to the Territory community while seriously weakening the Aboriginal voice within that community.

The threat posed by statehood, I would argue, is both real and serious. At the same time, however, the process through which statehood is being pursued offers some important opportunities to NT Aborigines in general, and to the land councils in particular. The NT government is committed to a referendum on statehood in order to demonstrate both to the people of the Territory and to the Commonwealth government the public's support for statehood. The latter is particularly important given the control that the Commonwealth has over the timing and content of statehood. It is essential for the Territory's case that the referendum demonstrate not only general support for statehood but also some reasonable measure of Aboriginal support. If the referendum showed that Aboriginal voters strongly opposed statehood, the task of convincing the Commonwealth that statehood should proceed would be immensely complicated. The prospect of statehood being 'rammed down the throats' of NT Aborigines is not one of any great appeal to the NT government.

As the discussion in Chapters Two and Three showed, Aboriginal support for statehood cannot be assured. While there is some support in the general Aboriginal population, there is also strong opposition among Aboriginal leaders. In the crunch, it is likely that the leadership position would prevail; Aboriginal public opinion on the issue is both soft and malleable, and leadership cues are likely to be decisive in voting behavior. Yet for these very reasons,
it is also likely that Aboriginal leaders could 'deliver' a pro-statehood referendum vote if they set out to do so. This means that Aboriginal leaders, and in particular the land councils, have a very strong bargaining position with respect to the statehood package.

If the NT government puts together a statehood package that protects Aboriginal land rights, leaves the door open for some meaningful form of Aboriginal self-government, and protects the political position of the land councils, then the land councils could be instrumental in delivering a pro-statehood vote in return. Conversely, should the statehood package weaken land rights, close the door to meaningful Aboriginal self-government, and threaten the survival of the land councils, the land councils are probably in a position to deliver an overwhelmingly negative vote in the statehood referendum. Thus in the time before the referendum, the land councils enjoy a very strong bargaining position if the NT government and the councils are prepared to bargain, and are prepared to do so in good faith.

There is another critically important point to stress here. The push for statehood provides Aborigines with the chance to build important forms of political protection within the constitutional and institutional structures of the Territory. The Land Rights Act as presently constituted provides only legislative protection for land rights (and for land councils), protection that can be amended or withdrawn at the whim of the Commonwealth government. Statehood provides the chance of constitutional protection within the NT state constitution. Even if that protection proved initially to be weaker than the present Land Rights Act, it could nonetheless offer greater protection over the long run. The more general point is that statehood provides Aborigines with the opportunity to have their interests woven into the Territory's institutional and constitutional structure, and thus to be less reliant on the protection of a distant and uncertain Commonwealth government. Statehood is not a zero-sum game being played between the NT government and NT Aborigines; it is a game in which both can win.
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