

Strange times

Michael McKernan, Peter Pierce, Liz Curran, Peter Seidel, Frank Fisher | 05 July 2006

Strange times Fires and fears

The hill behind this house and all the grassland on the Farrer ridge is blackened. Our bit of the Canberra Nature Park will regenerate in time but those who live next to it and take their morning walk on it will never forget how close it came to being our destroyer.

'Our fear', the policeman at the end of my driveway told me, 'is that this wind change will bring the fire back to you and that we will lose a significant number of houses in this street. Our advice is that you go now'. And leave a house that has been home for 20 years, a place of joy and tears, place of a wedding, numerous celebrations, much good food and drink; of children growing and leaving; place of exam fever and excitement, of steady work, of an office and library that is still my joy.

We were lucky, every one of us in this street. Fire to back fences; fire into backyards but no significant damage. We walked on Farrer ridge the next morning, dozens of us. People who may merely have nodded on a morning walk, or previously offered a shy 'g'day' now talked of our common fear and

frustration in the fires.

Jesse, from lower down the street, was wide-eyed at the devastation we were all measuring. He and his Dad, he proudly told us, had opened the gates to try to help the poor kangaroos so disoriented they were bounding in terror into the fire. Jesse was pleased to see some kangaroos that morning sitting on the black soil, bewildered but safe. We told him he and his Dad had done a good job and the eight-year-old boy went away grinning.

Our morning paper told us that over 300 homes had been lost, and this was a shock because the ABC had told us the night before of dozens, then possibly 100 homes destroyed. And the figure would grow throughout the week until it reached 530. Aren't the excited early figures in disasters like these usually scaled down as reality defeats hyperbole? Relentlessly our figures went up, further cause for worry and concern as we grieved for those who had lost everything.

It was the lightning strikes, we told anyone who asked for causes, and the dreadful drought, and one of our hottest days on record and winds that you wouldn't believe. All these factors came together at precisely the wrong moment and nothing could stop them from creating the firestorm that was Canberra on 18 January.

A week later I was at the ABC to talk; that's what I do. Lying on a chair in the producer's booth was a collection of Sunday papers—as if the presenters needed any more news than they already had. '800 missiles for Baghdad in 48 hours', a Sydney paper screamed; 'US plans revealed'. The war plan was simple: a city reduced to rubble, its citizens dazed, bombed, blitzed, its armed forces incapable of offering any resistance. Only then would the ground forces move in to take control and oversee 'regime change'. After that they could go home, unscathed, ready for the next episode in their campaign to make the world safe. Simple, really.

We have no way of knowing if the newspaper report is an accurate version of the US plan of action. If it is, it presents a terrible dilemma for those of us who cling morosely to the just war theory with its strictures about measured responses to military aggression, and the protection of the lives of civilian bystanders. And it is sickening to those who have just been through these fires. We can easily put ourselves into the shoes of the Iraqis whose homes and gardens and parks will be swept up in the firestorm. Whose lives will be lost, whose communities will grieve, whose children will want security, where neighbours will talk and ponder and come together in a community of fear and frustration.

If our opinion polls tell us that few Australians want this war, should we not also believe that few Iraqis would want war either? Do we not share a common humanity or is that a sentiment that war has always proscribed? In earlier wars the enemy has been demonised, but Australians, still traumatised by these fires, are reaching out in sympathy to any who grieve, are confused, or seem defeated.

We are entering uncharted waters with this war, for when did Australia ever go to war without the overwhelming support of the people, at first, for the cause? In our history, wars have become less popular as they have dragged on, but in the first flush people have believed in the war and in their government's action. Not this time. Even those going off to the war, some of them anyway, have expressed misgivings.

These are strange times; we can but hope.

Michael McKernan

Cooling off in Tasmania

Digging for riches

A pipe-smoking man in hat, overcoat and tie points to a thermometer. The best selling postcard at the State Library of Tasmania enjoins people to 'Cool Off in Tasmania', for in summer in the island state, the average temperature in the hottest month is a mild 62.3oF (16.83oC). For the families of Martin Boyd and Patrick White, this was one of the attractions of a holiday away from the mainland, and for the Boyds, at least, summer in Tasmania also allowed a recoupment of finances.

On New Year's Day 2002, the mainland conception of a Tasmanian summer as an oxymoron seemed coldly warranted. Through sleet and rain the temperature barely struggled into double figures. Yet still we enjoyed the superb fruit at the Christmas Hills raspberry farm, the cheeses of Ashwood, the cluster of early 19th-century honey-coloured sandstone buildings at the Woolmer's estate on a rise above the Macquarie River. A year later, the pre-Christmas maximum temperatures at Ross, in the Midlands, scarcely varied on either side of 30oC.

Tourists thronged in Church Street, eagerly photographing the bridge over the Macquarie with its low, graceful arches and cartoons in stone sculpted by the convict Daniel Herbert. Fewer ventured to perhaps the prime historic site in the town, the Female Factory, in which female convicts underwent a strenuous rehabilitation designed to fit them for domestic service. Tourism has preserved Ross, and the tourists come here for what has been preserved. Some locals mutter about 'terrorists'. One in particular, tattooed, pony-tailed, taunted an indifferent Japanese woman to the limits of his vocabulary with cries of 'Chow Mein', 'bamboo'.

If there is a residual uneasiness about an economy that needs the arrival of short-term visitors from far away, there also appears to be a curious refusal of optimism concerning the discovery of extensive oil and gas reserves to the west of Ross. The field stretches from Epping Forest (treed no longer) in the north to Bothwell. The prosperity of Tasmania has for so long been associated with the distant, whaling past, that no-one believes in an Aberdeen on the Central Plateau, or an unemptiable lake of oil beneath the sheep paddocks.

A dream of transforming the former prison settlement of Maria Island, off the east coast, into the 'Riviera of the South' bewitched and bankrupted an Italian entrepreneur, Diego Bernacchi, in the late 19th century. That mild coast has nonetheless become a place of summer retreat for Tasmanians. Along it are names given by French explorers of the 18th century: Peron, Boulanger, Baudin, Freycinet. At Scamander, the surf breaks on a long beach made hazy by spume. St Helens, sheltered within Georges Bay, trebles in size in January. This is flat land, with lagoons along the foreshore and black, hoop-necked swans swimming in them by the squadron.

Yet a few minutes west takes one sharply climbing into the hinterland of Goshen and Gould's Country. By default, or deviousness, Tasmania hoards many of its riches, while ostentatiously putting others on show. The few visitors to Gould's Country are probably there by accident, or on the promise of a name. They will marvel at the beauties of the deep, plunging valley besides which it is perched, even as they listen for the twang of banjos. Venturing further, on a rough and winding track through temperate rainforest, they will come to the Blue Tier. In Tasmania, the more remote often means the more controversial. In this lonely place, the next battle over old growth logging is likely to come.

Guidebooks will have sent tourists elsewhere, to the Pub in the Paddock (St Columba's Falls Hotel) with its bibulous pet pig, and the cheese factory at Pyengana, famous for cheddar. Travelling down the coast, one begins to encounter vineyards, such as the splendid Freycinet concern, couched in a natural amphitheatre, not far off the road. Further to the south at Cambridge, across the Derwent from Hobart, is the Meadowbank vineyard. Its top-of-the-range pinot noir is named for another literary pilgrim who might have been dismayed to find himself here: the label is Henry James.

Oil strikes pending, what is persistently dug out of Tasmania—by novelists, poets, historians—is its past. Some of the excavation, as at the Ross Female Factory, is archaeological. More often the process is predatory, and of the imagination. For the stuff of literature is everywhere to hand. In the Catholic section of the oldest of the cemeteries at Oatlands, in the Midlands, is a headstone with this inscription: 'Sacred to the Memory of Patrick O'Flanagan who was slain by the fall of the turret of Saint Paul's Church, Oatlands.' Not killed, but slain—and by the stones of an Anglican church.

In the distance are the Western Tiers. A.D. Hope grew up in their shadow, in the Presbyterian manse at Kirklands. However, it may be in the human details—fugitive, neglected, but resonant—rather than in its natural grandeurs, that rich Tasmanian stories can be guessed at, and made ready to be told again. Thus Hope's friend, James McAuley, wrote a poem about visiting Kirklands and finding an epitaph of eloquent plainness in this country churchyard: 'Here lies Sissy, wife of Tas.' Ambivalently welcoming so many outsiders, Tasmanians will find ways of reclaiming their own. —Peter Pierce

Where now for reconciliation? Silenced voices

In a photographic exhibition of Aboriginal faces at Melbourne's Museum, I was struck by the remote look in the eyes of older Aboriginal people photographed in the early 20th century.

In 1999, a young Aboriginal colleague and I interviewed a dignified Gippsland Aboriginal woman in her eighties whose eyes had that same watery sadness. We were asking this woman about her earliest memories, experiences and aspirations for the future. When we touched on her early history and cultural experiences, she would not discuss these issues because, she said, 'it was shaming'. Immediately, my colleague and I jumped to the conclusion that she was speaking of a cultural taboo or 'secret women's business'.

We were about to change the subject when I decided to ask her what she meant by 'shaming'. She responded that she had been told by the mission owners not to talk about her culture, not to speak her language and to cease telling her oral histories; otherwise, she and her family would not get their rations and would lose their children. This was what she meant by the term 'shaming'. Some six decades later this woman's conversation and behaviour were still being circumscribed by what she had repeatedly been told by figures of authority in her youth and middle age.

The Council for Reconciliation Declaration was tabled in 2000. The lead-up saw nationwide efforts at reconciliation by Indigenous and non-Indigenous Australians. Now the initial enthusiasm seems to have disappeared, and either inertia or disappointment has set in. The recent decision in the High Court Yorta Yorta case (Members of the Yorta Yorta Aboriginal Community v Victoria, December 2002) left many Aboriginal Australians feeling they had been let down once again—that their culture was again being denied and dismissed. The High Court appeal by the Yorta Yorta people was not upheld by the majority.

There are many ironies in native title and stolen generation cases such as Yorta Yorta and Gunner & Cubillo. First, the bench mainly consists of white men sitting in judgment on what is or isn't traditional Aboriginal custom. Second, judges often rely on the patchy and incomplete writings of historians and anthropologists who wrote at a time when assessments of Aboriginal culture were influenced by their own European conceptions of culture. Third—and what many Aboriginal people find so difficult to accept—oral histories, traditions and beliefs on which Aboriginal people place a high value are easily disregarded. The passage of time also makes the burden of proof and the gathering of evidence extremely difficult for applicants. A final irony is this: the actions of colonists who removed Aboriginal people from their lands and prohibited their cultural and linguistic practices had consequences; those consequences are now used as further grounds to defeat native title claims.

The Public Interest Advocacy Centre in Sydney, in consultation with Indigenous groups, has been examining ways to resolve legal disputes involving Aboriginal entitlements. The aim is to be less adversarial, less legalistic and more inclusive of Aboriginal cultural approaches, and to take into account the need for reconciliation. Indigenous people have long advocated involvement and control in decision-making that affects the community. There is the Aboriginal and Torres Strait Islander Commission (ATSIC), but that, by contrast with the Advocacy centre, is a bureaucratic structure devised by white Australians. The allocation and distribution of its resources is largely determined by government priorities that may or may not accord with what communities see as critical areas of need. In western Victoria, for example, resources that were being used effectively to assist young Aborigines had to be diverted because of a shift in government directives. In addition, the election process for members of ATSIC's board and its commissioners is highly politicised and reinforces power structures.

In Australia in 2003, Aborigines still experience high levels of disadvantage. They are over-represented in the criminal justice system and experience a staggering level of daily discrimination on the basis of their race. I witnessed this directly while travelling on a project with two Indigenous men in 1999.

Many Indigenous families experience domestic violence, have significant health problems, ongoing trauma, depression and mental health issues. Bandaid solutions are clearly not working. Money is often absorbed by cumbersome administrative costs before it can reach the communities.

Victorian Attorney-General Mr Rob Hulls, immediately prior to the hearing of the Yorta Yorta case, instructed the Victorian Government Solicitor's office to conduct the case in a manner that respected the witnesses under examination—an acknowledgment that witnesses had been traumatised in the past. After the case, he indicated that the State would not pursue costs and would try to resolve the issue through further negotiation. The Victorian government has made plans for land use agreements, and has signed a Victorian Aboriginal Justice Agreement with leaders in the Aboriginal community. What this will mean in practice is yet to be seen, but the document was developed in partnership with Indigenous people. The confidence of the Aboriginal community will be critical if the Agreement is to be more than a statement of aspirations.

The reconciliation process remains unfinished. The courts, given their role in interpreting and applying the law, may not be the appropriate place for these issues to be resolved. Canada, South Africa and New Zealand have all now taken alternative paths towards understanding, recognition and inclusion, and making amends for past mistakes. The federal government speaks of practical reconciliation, but perhaps progress will only occur when the broader issues are better understood. Perhaps, as Lowitja O'Donoghue once said, 'It is for the people to lead and then the leaders will follow.'

Liz Curran

Tides of history
The new terra nullius

'[F]or myself I might have questioned whether the use of the motor boat powered by mined and processed liquid fuel, and a steel tomahawk, remained in accordance with a traditional law or custom'.

So mused High Court Justice Ian Callinan in his consideration of the appropriate means of exercising certain native title hunting rights, on his way to dismissing the Yorta Yorta High Court appeal.

Presumably, for Justice Callinan, a wooden spear and a canoe seemed more appropriate.

In also rejecting the appeal, the remaining majority of the High Court stated that native title claimants fail if they cannot prove that traditional law has continued substantially uninterrupted from 1788 to the present. According to the majority, extinguishment of native title happens when an Indigenous society whose laws and customs existed in 1788 ceases to be. Left unexplained is how a whole society can, at some date in the past, instantly disappear.

The majority accepted that it was open to the trial judge, Justice Olney, to find as he did that Yorta Yorta native title had, in 1881, (using his regrettable metaphor) been washed away by the tide of history.

Justice Olney based his finding on the account of Edward Curr, a European squatter and amateur ethnographer, who lived in Yorta Yorta country for a period around 1840. Curr described burial of the dead, punishment by spearing, profligacy with food. The judge looked in vain in the written record from the mid-1800s for observations similar to those of Curr. And the Yorta Yorta were held to account for the gap that he found.

The judge chose 1881 as the key date because in that year 42 men, 'members of the Moira and Ulupna Tribes', had signed a petition, drafted by a missionary to the governor of the colony, seeking farming assistance. For Justice Olney, this constituted 'positive evidence' that the ancestors of the Yorta Yorta had abandoned traditional laws.

After comparing some contemporary Yorta Yorta practices handed down by 'the old people', Justice Olney held that, fatally to the Yorta Yorta case, they differed from those described in Curr's memoirs.

The Yorta Yorta people today attach great importance to such places as scarred trees, middens, and burial sites on and in their country, and seek to protect them as part of their living cultural and spiritual heritage. To the judge, the use the ancestors made of such places was purely utilitarian and no traditional law required their preservation in 1788.

The practice today of taking from Yorta Yorta country only such food as is necessary for immediate consumption, and rituals associated with re-burial of skeletal remains, taken years before to museums local and afar, are not, according to Justice Olney, traditional customs. Curr, according to his written observations, did not come across these practices among the Yorta Yorta with whom he came in contact.

But the old people weren't dug up back then. And the concerns of the Yorta Yorta today to conserve natural resources, in the face of salinity, extensive logging and the introduction of cattle into their country? For Justice Olney, these are issues of recent origin in which the original inhabitants in 1788 could have had no interest.

It now seems that Aborigines may forfeit native title rights unless they live as their ancestors did according to the written accounts of 19th-century English squatters —whether accurate or not. Applying the judge's logic and the High Court's acceptance of it, if natural resources were abundant at first contact, then they should be used as if abundant today, regardless of the consequences. And sustainably managing environmental changes wrought by white occupation would be a negative, rather than a positive, element of any native title claim.

The High Court majority accepted that proving native title could present an 'especially difficult' burden for claimants, particularly where laws and customs have been adapted in response to the impact of European settlement. But where in Australia has adaption not been the experience?

By dismissing the Yorta Yorta appeal in the way it did, the High Court majority did not directly confront a critical question that follows from acceptance of the trial judge's 'tide of history' finding: have the Yorta Yorta fabricated their belief that theirs is a society traditionally connected to country?

Of course they haven't. Witness their inspiring oral history of long and strong survival as identifiable peoples. Sadly, the treatment of the Yorta Yorta at the hands of the legal system may lead some to label their laws and customs a recent invention.

In the High Court, Justices Mary Gaudron and Michael Kirby dissented, concluding that it is unnecessary for native title rights to have been continuously exercised, and that laws may be traditional despite their not corresponding exactly with those practised prior to contact. But Gaudron and Kirby were in the minority.

If, as now appears likely, the 'tide of history' construct becomes the new terra nullius, then the courts of law will not be the places to deliver native title justice.

Properly resourced mediation, not litigation, will become the way forward. In Victoria, Attorney-General Rob Hulls has recently reiterated Victoria's desire to meet Yorta Yorta aspirations. Others may follow suit.

Peter Seidel

Being scared of GM

An environmental scientist's view

Science writer Graeme O'Neill's article entitled 'GM scare heats up' (Science Watch, Melbourne Sunday Herald Sun 29 December 2002) warrants a response. Here it is.

Being scared of GM [Gene/Genetic Manipulation] may not be rational but it is reasonable. Humans are still very much taken with their apparent power over nature. The insights of science have heightened both the scope and extent of that power, and genetic manipulation represents a quantum leap in both.

Science, however, is not itself power. It is the careful attempt to build theories that can withstand the tests of repeated experimentation and open criticism over time and varied practice. The creation of theory is the domain of informed inspiration, but transforming theories into science is the domain of rationality. It involves finding and running experiments that fit into what is already accepted as science and then subjecting the results to repeated criticism. Science may be our most noble creation, and so the recently released (December 2002) Australian Academy of Technological Sciences and Engineering report about poor science teaching in schools is well justified in its concern.

But however noble, science is not (and never can be) ultimate truth. It does not aspire to that. It 'simply' is the most able set of interpretations we have at any time and is, by its nature, always open to questions about its insight, laws and methods. Scientists are definitely not in a position to say, as Graeme O'Neill does, that we have 'nothing to fear from GM foods'. We can only say, as he does a little earlier in his article, that 'GM ingredients have been on our supermarket shelves for six years without a single scientifically reputable report of any adverse impact on human health'. Even then, as a scientist I must ask questions about how well O'Neill knows the field of writings on the topic and about what he regards as reputable.

A more important concern that genetic manipulation brings up is one that goes way beyond direct health implications to humans. It arises out of the doubt we must always have about scientific knowledge and the contexts within which it is applied.

Science doesn't offer directions or prescriptions although it can be used to test directions and prescriptions when testable bases of direction and prescription are found. Uses or 'contexts of application', on the other hand, arise from priorities applied imaginatively, and priorities arise from social and personal expectations.

As is the case in all fields of innovation, genes are engineered according to the priorities of those with influence. Such priorities are supported by the ways of living of most of the rest of us—that is, probably by yours and certainly by mine. While these priorities may well reflect market opportunities offered as a result of scientifically illuminated possibilities, the opportunities are neither science nor are they necessarily benign. They depend on interpretations, and interpretations are, in part at least, idiosyncratic and unpredictable—and most of us would fight for that to remain the case.

If we accept evolutionary theory, we might say that organisms develop within the possibilities available to them in their own structures and in the structures of their surroundings, propelled by the mutations that chance brings their way. Genetic manipulation involves imposing the usual two sets of interpretations and priorities on nature: those embodied in existing science (what we know) and those represented by the existing market (what's important to us). These provide new sources of mutations which are the kick or motivator in the evolutionary process. While human manipulation can certainly be regarded as just another evolutionary propellant which the built-in structures of nature can be relied on to accept or reject, the equation is not quite that simple.

Humans are already sufficiently powerful to suppress nature's attempts to reject us. (Indeed, as a still-living sufferer of an auto-immune disease—Crohn's—I am a living example of that power.) We have become a global or nature-wide influence. This in itself may not be a problem. However, we have no choice but to exercise that influence through the interests and interpretations available to us. And what attracts mass-market support commands most of our resources and efforts. It becomes entrenched, part of our vested interest and therefore very difficult to remove quickly or to change. We develop protective devices, our world-spanning risk-management infrastructures: insurances, legislation, markets, armies and especially the political policy-making infrastructures that underlie the acceptability of all the others.

So, with only the current shallow public assessment structures to judge what the market presents to us, we are determining the future of something with very broad implications. And again, while this is not new—Indigenous Australians went ahead and transformed the continent with fire without the benefit of an environment impact statement—we have now established global systems that make it difficult for nature as a whole to protect us. Worse, many of us who understand the importance of these systems to our everyday lives wilfully disregard the social rigidification they represent—in part, I imagine, because we cannot appreciate the natural consequences. Of course and inevitably, nature will prevail, but it may do so in ways that are unpredictable to us and that we may not like.

C.S. Lewis explained much of this 60 years ago in his punchy little book, *The Abolition of Man*. It is still in print. I recommend it as reading for 2003.

Frank Fisher

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