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**Indigenous peoples and
reshaping Australian
institutions: two perspectives**

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SERIES NOTE

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- investigate the stimulation of Aboriginal and Torres Strait Islander economic development and issues relating to Aboriginal and Torres Strait Islander employment and unemployment;
- identify and analyse the factors affecting Aboriginal and Torres Strait Islander participation in the labour force; and
- assist in the development of government strategies aimed at raising the level of Aboriginal and Torres Strait Islander participation in the labour market.

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ABSTRACT

Noel Pearson's 'An Optimist's Vision' sees becoming a Republic as a major opportunity for Australia to move away from its colonial, mono-cultural past. The paper conceives of three population movements in Australian history which raise issues for this process: the original indigenous occupation; the colonial occupation; and the new post-war movement of immigrants to Australia from diverse backgrounds. The paper examines these movements in relation to the past, the present and the future. The past is regarded as something with which all Australians need to come to terms. It is argued that only in the last couple of decades has a willingness developed to challenge and deconstruct the rosy historical panorama of the colonist. Reconciliation in the present can only be achieved by repudiating colonialism's continued operation and legacy. The challenge for the future is to create a society which respects cultural diversity and achieves national cohesion, while guaranteeing equality. The movement towards a Republic is proposed as a central vehicle for institutional and constitutional renovation.

In 'Finding a Path' Will Sanders surveys some of the key institutional changes that have occurred over recent years in relation to indigenous people. The paper identifies a first wave of institutional reforms in the 1950s and 1960s that set out to break down the colonial legacy that excluded indigenous people from the mainstream provisions of the Australian state. These reforms were typified by the conferring of equal individual rights. A second wave of reform from the 1970s to the present has focused on group rights and has been more problematic and contested. Issues examined include land rights and native title, self-determination and self-management, the establishment of distinct indigenous political institutions, reconciliation and proposed constitutional reform. The paper considers international forces in other settler-majority societies that are influencing institutional change in Australia and vice versa. It ends by anticipating some institutional changes that might lie ahead as the processes of internal decolonisation inevitably continue and as Australia approaches the centenary of federation.

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Foreword

The Reshaping Australian Institutions Project is an ambitious cross-disciplinary initiative of the Australian National University's Research School of Social Sciences. It began in 1992 and will run until 2001. The Institutions of Aboriginal Australia Strand of the Project is being coordinated from the Centre for Aboriginal Economic Policy Research (CAEPR) in the Faculty of Arts by Dr Will Sanders.

In 1994 and 1995, with the assistance of the Australian Broadcasting Corporation, the Project has organised an annual series of three radio lectures on key issues of importance to the reshaping of Australian institutions. In 1995 one of the three lectures was given by Noel Pearson, Executive Director of the Cape York Land Council and occasional Visiting Fellow at CAEPR. His lecture, simply titled 'Reshaping Australian Institutions', was broadcast on Radio National's 'Late Night Live' on Tuesday May 30.

In November 1995, the Reshaping Australian Institutions Project held a general overview conference both to review the work of its many strands during the first four years and to look to the future. As coordinator of the Institutions of Aboriginal Australia Strand, Will Sanders gave a presentation to the conference entitled 'Indigenous peoples and reshaping Australian institutions: finding a path'.

This CAEPR Discussion Paper makes available written versions of these two verbal presentations. As the paper, as a whole, has been given the title 'Indigenous Peoples and Reshaping Australian Institutions', the two individual papers have been retitled. Reflecting its tone and comments by host Philip Adams in discussion which followed the radio lecture, Noel Pearson's paper has, with his permission, been retitled 'An Optimist's Vision'. For Will Sanders' paper the subtitle of his lecture, 'Finding a Path' has been used.

Among CAEPR Discussion Papers, this is a very unusual publication. Discussion papers do not generally reproduce verbal presentations. However, in this instance I thought it worthwhile to publish these two complimentary verbal pieces in order to make them available in more permanent form and to a wider audience. As the last discussion paper for 1995, from the Centre's perspective it is encouraging to end the year on an optimistic note about the future.

Jon Altman
Series Editor
November 1995

An Optimist's Vision

Noel Pearson

Institutional renovation almost invariably follows in the wake of conflict. In the aftermath of war, new institutional arrangements ensue. Indeed some of the world's great institutions have resulted from a desire to establish new foundations for society, which not only have the capacity to settle conflict but to indeed resolve and to avoid conflict in the future.

This evening I am concerned with reshaping Australian institutions in the aftermath of the colonial conflict between the indigenous peoples of this country and those who came to join them on these shores over the past two centuries. The settlement of this conflict has been long in the coming, and it is a testament to the vehement history of denial of the Black Wars that only in the closing years of the twentieth century have Australians begun to acknowledge and deal with the legacy of their colonial past.

I do not presume to speak on behalf of indigenous peoples generally, many of whom will beg to differ on the answers to some fundamental questions about the country's future and the place of the country's indigenous peoples in that future.

I am, from the outset, an advocate for this country's transition to a Republic. I understand that there are those in the Aboriginal community who will be opposed to it.

Constitutional change and the recognition of the place and rights of indigenous peoples within the country's legal apparatus is something that I take as a given. It must happen and there has begun in this country various discussions about what such constitutional amendments might entail. These discussions are not new, the issues having been at the core of earlier talk about a treaty, about the need for a formal settlement between the old and new of this land.

This evening, I wish to venture thoughts about the philosophical underpinnings of the move towards a Republic, and to argue its importance to shaping a new relationship with the indigenous peoples of this continent.

I want today to talk about the possibilities that lie ahead for three broad categories of people. Firstly, for those indigenous peoples whose presence on this continent preceded the creation of the Australian nation as we now know it. Secondly, for those primarily of Anglo-Celtic origin who forged a principally European (indeed British) Commonwealth in the Antipodes. And thirdly, for those people who have come recently and indeed, who will

come in the future to radically alter its location to the south of the Asian Pacific.

Allow me to conceive, in general terms, of these three movements in Australian history. Firstly, the fact of original occupation by the Aboriginal and Torres Strait Islander peoples of the country. Secondly, the colonial movement dominated by the Anglo-Celtic occupation of Aboriginal lands and their preeminent control of the country, and their forging of the country's institutions and national character and values. Thirdly, the new Australian movement where immigrants of numerous backgrounds now number as Australians, many without roots in the country's colonial past but are nevertheless shaping the country's future.

Let me put forward some primary justifications for why it is that the opportunity for national transformation into a Republic, must be seized. Firstly, I believe that the vision of Australian nationhood set out in 1901, and encapsulated in the present Commonwealth Constitution, is no longer appropriate for our future.

The Australia that prescribed that vision of democratic nationhood set out in the Constitution, was an Australia that is no longer. The Australia that designed that democracy was, of course, racist and strongly committed to the notion of a perpetual British society in the South Pacific.

The exclusion from citizenship of Aboriginal peoples showed that that vision of nationhood conceived of no place for the country's original inhabitants because they were of a different and inferior race.

This was effected in the census provisions of the Constitution and in the exemption of Aboriginal peoples from the Commonwealth's legislative power.

This old colonial Anglo-Celtic Australia, if it has not yet passed away, must necessarily. It is no longer of relevance or utility to Australia as it approaches the twenty-first century.

My second justification for a move to a Republic comes from the opportunity that it affords us to define a new vision for a social democracy that comprehends the three currents in our history.

A redefinition of our nationhood that:

Recognises and incorporates the long denied indigenous people of this country;

That in some measure casts off and in some measure reaffirms the values and institutions that were established by the predominantly Anglo-Celtic colonisers;

That lays the foundation for the incorporation of new peoples in a country that is committed to disavowing colonialism.

A multi-cultural society is ill-served by a mono-cultural Constitution. With the Republic we have the opportunity to refashion a vision for the future, which is a vision shared by all the peoples of this continent, not just by those whose grandfathers happened to determine the vision and, in the process, left some of us out of it. Not just by those who prospered under that vision and still continue to do so. Rather, a vision that is shared by those who were once excluded, and indeed a vision that can be shared by those who will come after.

I will now turn to the three movements to which I have referred earlier, and to the issues they raise. These movements will be discussed under the broad headings of the past, the present and the future.

Firstly, there is the past, and how we deal with it in the present. In order for reconciliation to take place in this country, both black and white need to come to terms with the past.

Only in the past two decades has this country's historiography begun to approach the presentation of the past with some willingness to challenge and to deconstruct the prevailing conventional political ideology. This ideology presented a rosy historical panorama that could only be seen through the contact history lens of the colonist. In Australia, this vista was one of an unpeopled continent, ripe for European civilisation and upon which no untreacherous blood has ever been spilled. This vista only revealed that blemish which was unavoidable and inherent to history: that the weak should lose and the strong should prevail absolutely. If there is one commonly asserted truth about the history of humankind on the planet, it is that there are those who necessarily and by their own fault and shortcomings, bite the dust, and there are those who can only say that this is the sad truth and we had nothing to do with it.

The problem with this view of history is that those who bite the dust frequently survive. Those who have survived the massacres and the diseases and the Diaspora and the propaganda, still survive. And they survive to be heard in the present.

It is the truth of survival that has seen Aboriginal people, in the late Professor Bill Stanner's words, break the Great Australian Silence and enter Australian history with a vengeance over the past two decades. The

work of historians such as Professor Henry Reynolds, and others who have revolutionised Antipodean historiography, have now illuminated the other side of the frontier. There is now a movement towards a history that is deconstructing that colonial vista, which is not concerned with preserving and reinforcing conventional colonial ideology, but instead reaching forward to a contemporary understanding, unrestrained by the distortions of past constructions. These past constructions justified colonialism and its reality in the present. The new history is not so concerned with reinforcing the colonialism which still lives amongst us today.

Is reconciliation possible? It must be. Much fruitless struggle and blood and tears are shed across this planet daily because peoples are unable to confront the challenge of, to use Father Frank Brennan's words, reconciling the irreconcilable: of dealing with historical grievance in as honest and dispassionate a manner as we can muster.

Australia is uniquely placed to deal with the challenge of historical grievance. And the goal of reconciliation must be striven for even though our views be numerous and our understandings diverse.

Reconciliation can only happen with the repudiation of colonialism. Not repudiation in the sense of denying what has happened in the colonial past, but repudiation of colonialism's continued operation in the present.

There are good reasons to believe that there are prospects for reconciliation in this country. The revolution in our understanding of the country's history, the High Court's decision in the Mabo Case, and Prime Minister Paul Keating's landmark speech at Redfern Park in December 1992 have of course been seminal moments. There has now been a fundamental revision of the country's colonial history and the prescriptions they urge for the nation's future.

The jingoistic insistence that the past two hundred years of colonial history was all glorious achievement is as foolish and immature as the insistence that everything about the past was odious. Professor Reynolds, in his landmark book, *The Law of the Land*, uncovered the truth about a great reform tradition in this country, with roots reaching back deep into the colonial past. The first political/legal land rights movement in the 1830-50s was one led by whites, for goodness sake. The historical record bears testimony to a tradition of protest at colonial slaughter and of testimony to Aboriginal racial equality with whites.

Now let us turn to the present. I have said that I am optimistic about the prospects of the country coming to terms with the past. Mabo and indigenous rights represent the ability of the country to deal with the past and to implement its prescriptions in the present.

Mabo required no less than an ungrudging acceptance and implementation in our country. Coming as belatedly as it did, the recognition of these remnant legal rights demanded a national consensus.

That this did not happen and the Federal Coalition is still unable to accept its terms, is an indication of how uncertain these important achievements are, though they be steps in the right direction for the country.

Mabo and the Federal Government's native title legislation are seminal moments in the country's history. Moments in which both black and white Australians of the future can be enjoined to feel proud.

Turning now to the possibilities which face us in the present. What is clear to me is that, so far as indigenous peoples are concerned, the symbolic and institutional progress needs to be filled out by substantive progress and justice.

Reconciliation cannot merely be hollow. The symbols must be made to work and they must have relevance to Aboriginal families and people on the street.

A lot more will need to be done to properly incorporate Aboriginal people into the economic and social life of the nation. At an ideological level and at a symbolic level I can see hope for the future of Aboriginal people in this country. But at a practical day to day level much needs to be done and many things are getting worse.

The social problems which engulf Aboriginal society are for the most part problems that can only be confronted and overcome by Aboriginal people, and the provision of resources must necessarily be matched by an honest commitment by the Aboriginal leadership to rise beyond the shackles of the past, never forgetting the past, but engaging for a future for their people.

Let me now turn to the future. I have spoken of the critical importance of reconciliation between black and white Australians. Proper reconciliation with Aboriginal and Torres Strait Islander peoples is fundamental if we are going to ensure that our future will not be as members of a nation of strangers.

There is a very pressing need for the Aboriginal community to engage with and forge relationships with the new ethnic communities that have emerged. There is also a pressing need to facilitate intra-ethnic reconciliation.

Like many Australians I am highly disturbed at the notion arising out of last year's Cabramatta debate that implied that somehow Australians of Asian origin should be particularly more grateful and beholden to the rest of us for their membership of the nation. That they should somehow earn their way and be Australian Nationals by grace alone.

I am also troubled by the real question of how we can build a cohesive society which celebrates difference and guarantees equality for all people.

This is, of course, the central challenge of our new scheme for a social democracy.

We need to understand that we are a collectivity of people with layered identities. We must abandon the simplistic notion of the single identity but accept that individuals will identify at different levels in countless permutations according to race, culture, sex, religion, age, politics, international, regional and local affiliations. But as individuals with a commitment towards making a national social democracy work.

And what might be the foundation for such a moral community in the Antipodes? My own view of the morality that underpins an unqualified sense of belonging to this country might be as follows: that it is only those Australians who are untroubled by the notion of recognising the moral rights of indigenous peoples to their traditional homelands, who themselves share an equally untroubled moral right to share in this country.

And none of us, indigenous and non-indigenous, have a moral right to deny a share of this country to those who have a need to come to this country in the future.

Australia's continued development as a moral society depends upon both our ability to keep the mechanisms of justice functioning and to guard with great vigilance our ideals and our self-expectation. A fundamental aspect of this process over the next decade must be the faithful and efficient implementation of the native title legislation and the working out of the common law on native title. Negotiated outcomes to land claims should be encouraged in particular, regional agreements should be facilitated by the Commonwealth and regional governments.

In the long term there must be a more careful focus on economic development strategies for Aboriginal communities. We need to find ways to facilitate capital investment in tourism and mining and other innovative land uses on Aboriginal land, whilst always having regard to the fundamental principle that Aboriginal lands should be inalienable.

If Aboriginal self-determination is to move from ideal to reality, the Aboriginal and Torres Strait Islander Commission (ATSIC) will need to be developed into an effective, efficient vehicle for Aboriginal self-management and resource distribution at the national level, which always strives to better reflect the principles of self-management and self-determination.

Delivery of services and management at the local level must be controlled by and be the responsibility of independent local groups. We need to question the wisdom and efficiency of centralised service delivery, and should instead tend towards local empowerment by the provision of resources. There is a difference between resource distribution (which should be ATSIC's primary domain) and service delivery (which must be locally and regionally controlled). Regional governing structures must be developed at the service delivery level where appropriate.

Fundamentally, non-indigenous people must understand that self-determination is the right to be equal and different. Indigenous people must understand that self-determination is, at its core, the right to take responsibility.

Aboriginal people and their values will play a leading role in future stewardship of the country's ecological heritage. They will be in the frontline of wilderness management, rehabilitation and protection. Proper environmental stewardship is an economic benefit to the country. Indigenous stewards need to be given credit for their role in managing, rehabilitating and protecting the environment. We have to be prepared to pay for rehabilitation and good management and to reject our long-held perceptions of the environment as an infinite, free resource.

We must become the country that has ecologically sustainable development as the central national policy to which all Australians - no matter their particular interests and roles - should be committed. Our commitment must be clear, practical and principled.

We are challenged with creating a society that respects cultural diversity and achieves national cohesion. This is to be achieved by guaranteeing equality and respecting difference be it of race, culture, religion, sex or sexual preference.

Our development must be socially and culturally sustainable. The principle of maintaining cultural diversity and enabling social reconstruction to take place and avoiding adverse social impact on communities must inform and guide our development agenda.

There is a need to define a commitment to social justice for indigenous peoples specifically and for Australians generally. The ethic of a fair go and our basic egalitarian instinct is not a bad basis for forging a national commitment to social justice. This philosophical and emotional resource is a valuable feature of our national psyche which we must treasure. It is our greatest reason for hope for the future.

We must never reconcile ourselves to the notion that sections of our community should be forever caught in the welfare trap. We must maintain our commitment to the best welfare safety-net we can provide, but this must not absolve us from pursuing policies that provide opportunities for all Australians no matter the circumstances of their birth, and which seeks to lever groups out of perpetual welfare dependency.

The process of national reconciliation being undertaken by the Council for Aboriginal Reconciliation must eventually lead to some document of reconciliation which is guaranteed by our Constitution. True, such an intra-national document must have bipartisan and overwhelming support from the Australian community. I believe that this country will eventually embrace such an instrument as part of our national legal apparatus.

We must review our institutional and constitutional structure so that indigenous peoples and indeed non-Anglo-Celtic people are included as founding citizens of a new order. This new order must affirm the positive core of our democratic inheritance, whilst setting out an agenda for an Australia in which *terra nullius* and *homo nullius* are artefacts of the past and no longer an intrinsic part of our national culture.

We must now seriously consider the need for a Bill of Human Rights for our country. The rights of minorities against the tyranny of the majority and indeed a constitutional right to equality must be guaranteed by such a Bill. This is critical to maintaining national cohesion in the future.

Australia must implement international law over and above notions of States' rights and regional parochialism. There must be fidelity to international human rights and environmental protection standards.

Our inevitable movement towards a Republic is the central vehicle for institutional and constitutional renovation. It must be a mature review which affirms the positive aspects of our achievements and institutions, and which also builds a new un-colonial foundation for a country where all peoples can share a place.

Both the environment and Aboriginal affairs must become a Commonwealth responsibility primarily, and a direct relationship must be developed between Aboriginal people and the Commonwealth.

Finally, with all of the other things that we expect to export to Asia in the future, we can export values through our achievements, advice, diplomacy and most importantly, our example. On the basis that we are a society that is reconciled with its indigenous peoples and has abandoned colonialism. It is a strong, cohesive social democracy which is also capable of celebrating difference and guaranteeing equality and which respects and guarantees human rights. The example and the moral force of reconciliation founded on justice may well be the most important contribution that indigenous and non-indigenous Australians will make to the Asia Pacific.

Finding a path

Will Sanders

Earlier this year, in one of the three Reshaping Australian Institutions radio lectures, Noel Pearson argued that institutional 'renovation' often follows in the wake of war or other major conflict. He was concerned with the reshaping of Australian institutions in the wake of the 'colonial conflict' between the 'indigenous peoples of this country' and those who had come to join them 'over the past two centuries'. He argued that historically there had been a 'vehement history of denial' of these 'Black Wars' and that it was 'only in the closing years of the twentieth century' that Australia had 'begun to acknowledge and deal with the legacy of its colonial past' (see p. 1 above).

There is no doubt that the closing years of the twentieth century have been, or should I say, are proving to be important ones for the reshaping of Australian institutions in relation to indigenous peoples. Indeed, the whole latter half of the twentieth century has, to my mind, been important in this regard and the opening years of the twenty-first century are likely to be no less important. This should not be a surprise. European colonisation of other parts of the world was a major historical process which took several hundred years to run its course. Decolonisation, or where that is not possible, dealing with the colonial legacy, really only began in earnest from the 1950s and 1960s and it too will take some considerable time. Perhaps what Peter Read (1988) has referred to in the Wiradjuri context as 'a hundred years war' will be followed in Australia by an equally extended period of institutional reform and reshaping.

In this paper, I wish to briefly survey some of the major institutional changes that have occurred over recent years in Australia in relation to indigenous peoples and to anticipate some of those that may still lie ahead. In relation to the latter, I will attempt not so much to be prescriptive as simply to indicate emerging possibilities. This will involve me in some discussion of comparative international developments, or what might be referred to in the language of yesterday's workshop as the 'globalisation' of indigenous peoples' issues.¹

The 1950s and 1960s constituted something of a first wave of institutional reform in Australia attempting to deal with the colonial legacy in relation to indigenous peoples. Reform focused on breaking down the legislative and administrative mechanisms under which Aboriginal and Torres Strait Islander peoples had been set apart from other Australians in systems applying only to them and excluded from such general institutions as the social security system, award wages and, in some jurisdictions, the

franchise. This first wave of institutional reshaping reached its high point in 1967 with the deletion of two exclusionary references to 'aboriginal natives' from the Australian Constitution. The Constitution then became totally free of any references to Aboriginal or Torres Strait Islander peoples, as too by then was the Commonwealth's social security legislation and, apart from a provision about voluntary enrolment, its electoral legislation.²

This first wave was, in many ways, an easy period of institutional reform which relied on a fairly unproblematic and uncontested ideology of equal individual rights for indigenous and other Australians. This ease and relative lack of contestation is suggested by the size of the 'yes' vote in the 1967 constitutional alteration referendum; over 90 per cent Australia-wide and over 80 per cent in every State.

The second wave of institutional reform aimed at dealing with the colonial legacy in relation to indigenous Australians, which has developed during the 1970s, 1980s and early 1990s, has been no less significant, indeed probably more significant than this first wave, but it has in many ways been more problematic and contested. The second wave has been more about group rights than individual rights and not so clearly or uncontestedly confined within ideas about equal rights.

Land rights, one of the two central demands of indigenous peoples over this period, has been a clear example of this greater contestation. From the 1970s, Australian governments began to recognise Aboriginal and Torres Strait Islander rights to land on the basis of traditional ownership and sometimes also on the basis of historical association or need. Land rights acts were passed applying to South Australia, the Northern Territory, New South Wales, Victoria and eventually also Queensland. But there were clear limits to the extent to which governments were willing to push this reform agenda and this related to perceptions among other community members that these were somehow 'special' rights applying only to indigenous peoples (for a good statement and critique of popular conceptions about land rights which influenced the Hawke Government in particular see Goot and Rowse 1991). When the High Court moved to recognise native title in June 1992 and thus established Australia wide common law indigenous land rights, these perceptions among others in the community once again came to the fore. Few with these perceptions would have noticed that group native title was less secure than a common law title of possession or that it had been able to be legitimately extinguished by governments without compensation up to 1975. Few also would have noticed that in his leading judgement in support of the recognition of native title, Justice Brennan argued that to maintain the 'authority' of earlier cases denying native title would have been to 'destroy the equality of all Australian citizens before the law' (*Mabo and Others v State of Queensland*

1992: 41). In Justice Brennan's jurisprudence at least, native title was an embodiment of equal rights, rather than anything special for indigenous peoples. But this did not reflect the commonly held conception, which had meant that this area of institutional reform in relation to indigenous Australians had proceeded so haltingly during the previous 20 years - including of course the Hawke Government's notorious back-down during 1984 and 1985 from its original commitment to national land rights.

The other central concern of institutional reform in relation to indigenous Australians over the last quarter-century has been ideas about self-determination and self-management. The former term draws on the language of decolonisation and national independence embodied in the United Nations (UN) charter of the late 1940s. However, because of Australia's post-war demography and geography as a settler-majority society with only a small, widely dispersed minority of indigenous peoples, decolonisation in the international sense was never a realistic expectation for the indigenous peoples of this country. Australia already had its independence from its imperial master some 50 years before the UN had championed national self-determination. Any decolonisation which ensued in relation to indigenous Australians would necessarily be internal and incomplete. Though indigenous Australians had far less prospects for independent national self-determination than other groups of colonised peoples, they still had a legitimate claim to being considered in this way. It simply could not be denied that Australia had been colonised and that its indigenous peoples still existed. So the problem became how to work out some form of 'internal' decolonisation, some significant measure of self-determination for indigenous peoples within the larger Australian nation state.

The Whitlam Government made a valiant start on this difficult national project. It adopted 'self-determination' as the key term of government policy towards indigenous Australians. But it did more than just change the rhetoric. As well as progressing land rights reform, mentioned above, the Whitlam Government also encouraged the incorporation and funding of indigenous community organisations, both for the delivery of specific services to indigenous peoples and for the conduct of more general indigenous community affairs. The Whitlam Government also established a National Aboriginal Consultative Committee, elected by indigenous people. These institutional experiments did not always meet with universal praise or great success. But they were major attempts, in their time, to give some meaningful and significant substance to ideas of self-determination in a context of inevitably incomplete internal decolonisation.

Twenty years on from the dismissal of the Whitlam Government, these ideas have not been turned away from to any significant degree. They have, if anything, been extended. More indigenous peoples' community

organisations have been encouraged and funded by governments to undertake an increasing range of service and other activities. The Royal Commission into Aboriginal Deaths in Custody argued in 1991 that the 'growth and effectiveness' of these organisations had been 'one of the most remarkable developments in the past twenty years' in Australia and that the further development of these organisations provided the 'best hope of achieving genuine self-determination' for indigenous Australians in the future (Commonwealth of Australia 1991: 22-4).

The National Aboriginal Consultative Committee was marginally restructured in the early years of the Fraser Government into the National Aboriginal Conference. This latter body was abandoned in 1985 in the wake of the Hawke Government's back down on national land rights for indigenous peoples. But there was never any question that some new national representative body for indigenous peoples would in time be devised. After a lapse of five years, one eventually was. The Aboriginal and Torres Strait Islander Commission (ATSIC), which came into existence in early 1990, was a bold experiment in institutional design. It attempted to both broaden and deepen the Commonwealth Government's commitment to indigenous peoples' self-determination, while balancing this with demands for greater public accountability in Aboriginal and Torres Strait Islander affairs (Sanders 1994). The ATSIC experiment established regional councils of elected indigenous representatives feeding into a national predominantly-elected body of commissioners. The Commission was given control of Commonwealth Aboriginal and Torres Strait Islander affairs portfolio expenditure and programs, as well as representative and advisory roles to government.

ATSIC has not, of course, been without its critics. Some criticisms have been substantial. The fact that ATSIC employees are still Commonwealth public servants does clearly compromise the Commission's image of independence from government and its claim to being an exercise in self-determination. The fact that one half of Commonwealth indigenous-specific expenditure occurs outside the Aboriginal and Torres Strait Islander affairs portfolio and hence is not directly under the control of ATSIC is also a complicating factor. These aspects of the ATSIC experiment will, however, change. I have little doubt that addressing them will be among the next round of institutional reshaping we see in this area. ATSIC will in the near future, I believe, become both more regionalised and more independent of government. But it will still be a Commonwealth-created statutory commission and heavily dependent on the Commonwealth for its funding. Such are the contradictions inherent in incomplete, internal decolonisation.

Even with ATSIC further reformed and native title running its full course, which could itself take several decades, more still will be demanded and

obtained by indigenous peoples in Australia by way of institutional reshaping. So great is the legacy of colonialism, evidenced in the contemporary disadvantage of indigenous peoples (or should I say the contemporary advantage of non-indigenous peoples),³ that significant further institutional reshaping seems almost inevitable.

Frank Brennan, who has been associated with the Institutions of Aboriginal Australia Strand of the Reshaping Australian Institutions Project over the last three years, is representative of an important force, other than indigenous peoples' demands, which seems to be pushing in this direction. That force is also represented by the Council for Aboriginal Reconciliation, a 25 member body of approximately half indigenous and half other Australians established by the Commonwealth Parliament in 1991 with a ten-year time frame. Both Brennan and the Council for Aboriginal Reconciliation attempt to propose ideas about significant institutional reform in relation to indigenous peoples in ways which are largely non-threatening to both most indigenous and most non-indigenous Australians. As Brennan puts it, he is about 'building bridges' (Brennan 1995: xi). Anyone who can write two books, as Brennan has done, entitled *Sharing the Country* and *One Land, One Nation* while being seen as a great friend and champion of indigenous Australians has truly mastered the art of building bridges, indeed of reconciling the seemingly irreconcilable.⁴ Such views will clearly be a significant force for further institutional reform in relation to indigenous Australians in the years to come.

The Council for Aboriginal Reconciliation is still, at this stage, undecided on whether an 'umbrella national document' would best advance the process of reconciliation between indigenous and other Australians (Council for Aboriginal Reconciliation 1995: 40). However, increasingly I think that this simply reflects the Council's perhaps natural cautiousness early in its ten year time frame. The Council will, in the end I believe, almost necessarily come down in favour of such a document, or documents, in order to give the commitment to reconciliation some ongoing standing. I note that Noel Pearson, in his Reshaping Australian Institutions lecture argued that a document of reconciliation must eventually be developed and also 'guaranteed by our Constitution' (see p. 8 above).

Among the things the Council for Aboriginal Reconciliation has seen fit to recommend at this still fairly early stage in its ten-year time frame is that 'an appropriate new preamble to the Constitution' acknowledging 'the prior occupation and ownership, and continuing dispossession of Aboriginal and Torres Strait Islander peoples' be prepared for submission to a constitutional alteration referendum through a 'consultation program ... concluding by the end of 1996'. The Council has also recommended the

removal of the 'power of any State to disenfranchise any citizens on the grounds of race', which still exists in section 25 of the Constitution, and

that:

'in conjunction with other referendum questions dealing with indigenous issues, the proposition also be put that the Commonwealth's power to legislate to outlaw racial discrimination be entrenched in the Constitution' (Council for Aboriginal Reconciliation 1995: 37-8).

A little further on in its recent report the Council also recommended that 'in any promotion of public debate' about a Bill of Rights in Australia, the Commonwealth Government 'should ensure that the debate also deals with the issue of specific indigenous rights for Aboriginal and Torres Strait Islander peoples' (Council for Aboriginal Reconciliation 1995: 44).

It would appear, then, that whatever form of institutional reshaping Australia engages in over the next few years, through the work of the Council for Aboriginal Reconciliation and people like Frank Brennan, issues about the recognition of indigenous Australians will make forceful claims to being part of the debate. Even minimalist Republicans will have to face the reality that there can probably be no Australian Head of State without rewriting the preamble to the Constitution and there can probably be no rewriting of the preamble to the Constitution without acknowledging the history of colonisation and its contemporary legacy for indigenous Australians.

Another reason that I see further significant reshaping of Australian institutions in relation to indigenous peoples as almost inevitable is due to a process of international comparative cross-referencing between indigenous peoples in settler-majority societies which has been occurring increasingly in the last decade or so. This has been driven along, in part, by the increased interaction of indigenous peoples from around the world through the UN Working Group on Indigenous Populations and its work on the Draft Declaration on the Rights of Indigenous Peoples. It is also evident in the chapters of Frank Brennan's books comparing recent New Zealand, Canadian and United States experiences with those of Australia (see Brennan 1991, 1995). Settler-majority societies around the world have been responding in different ways to the decolonisation demands of indigenous peoples over the last two or three decades and there is now a quite extensive international repertoire of institutional experimentation on which to draw. New Zealand has reinvigorated its Treaty of Waitangi and, through a number of phases, given it legal standing subject to judicial review. Canada, like Australia, has newly recognised common law native title, but perhaps more importantly also recognised 'existing aboriginal and treaty rights' in its 1982 Charter of Rights and Freedoms. This

constitutional recognition of indigenous rights has reinvigorated a Canadian tradition of treatying and led to modern agreement-making processes between the greater Canadian nation and many indigenous nations within it.

There is to my mind little doubt that these institutional developments in other settler-majority countries are being and will increasingly be looked to by indigenous Australians to provide ideas for the next wave of institutional reshaping aimed at dealing with the colonial legacy for indigenous peoples in this country. There will be increasing claims for the recognition of indigenous peoples within Australia as 'nations' in their own right, albeit in United States terminology as 'domestic dependent nations'. Indigenous peoples' organisations will increasingly demand to be regarded as governments of these nations, rather than community organisations. They will want the jurisdictions of these governments recognised and given a place in the Australian system of intergovernmental relations.

By referring to recent developments in Canada and New Zealand and suggesting that similar developments will almost inevitably occur here in the future, I do not wish to suggest that Australia is somehow a laggard among settler-majority societies in processes of internal decolonisation of indigenous minorities. The reality is, I believe, that countries like Canada, the United States and New Zealand are caught in the same structural circumstances as Australia and, of necessity, have had to respond to demands for internal decolonisation of indigenous peoples over roughly the same time frame and at much the same pace. Any possibility of any one of these countries being that much further ahead or behind the others is limited by these structural circumstances. A more realistic analysis is, in my view, that some countries, because of their different traditions of dealing with indigenous peoples in particular ways during colonisation, have begun internal decolonisation in different ways. Because Australia had virtually no tradition of treatying with or constitutionally recognising indigenous peoples, it has done other things in its first and second waves of institutional reform for internal decolonisation. It has legislated for land rights and for the incorporation of indigenous peoples' community organisations. It has established a nationally elected structure of indigenous representatives which, in its third reincarnation as ATSIC, has also been given administrative control of a range of government programs for indigenous peoples. The ATSIC experiment, in particular, is looked to by some indigenous peoples in other countries, like Canada and New Zealand, as something they do not have and the likes of which may be quite useful to them. They would like to gain something like ATSIC, while Australia's indigenous peoples would like to gain something like their constitutional recognition of rights and jurisdictional recognition as governments. International comparative cross-referencing, or globalisation, of indigenous peoples' issues, is clearly a dynamic process which will push internal

decolonisation some considerable distance further yet, but which also does not allow any one country involved to slip that far behind.

This comparative structural point can be used, in conclusion, to reinforce the idea that significant further reshaping of Australian institutions in pursuit of the internal decolonisation of indigenous peoples is in many ways inevitable. The question is not whether it will happen, but in what way and when. The Council for Aboriginal Reconciliation has made extensive use of metaphors about walking, perhaps to suggest this sense of inevitability. Its journal is called *Walking Together* and its report on its first triennium is subtitled *The First Steps*. Extending these metaphors liberally, I would suggest that future reshaping of Australian institutions in relation to indigenous peoples is essentially a matter of *finding a path* along which to walk. That Australia will be walking along some path of institutional reform is virtually inevitable. It is only the precise location and nature of that path and the pace of the walking that remains to be determined.

Notes

1. The Conference at which this paper was delivered was preceded by a one-day workshop on 'Globalisation and Institutions'.
2. This provision for voluntary enrolment for Aboriginal peoples was repealed in 1984.
3. This reversal of the usual terms was a reference to a presentation by Joan Eveline at the Reshaping Australian Institutions conference in which she had encouraged participants to examine common terms of discourse such as 'female disadvantage' and at times to reverse them, to terms such as 'male advantage' to cast new analytic light on subjects being examined.
4. Richard Lucy in *The Australian Form of Government* makes considerable use of the idea that politics is in part the art of reconciling the irreconcilable. He writes:

A politician who can persuade groups with irreconcilable demands that he can satisfy each of them will get more support than one who cannot. Thus good politicians are used to persuading people that they can reconcile the irreconcilable (Lucy 1985: 1).

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