THE ROAD TO SELF DETERMINATION

"*Every man, and every body of men on earth, possesses the right of self-government"*- Thomas Jefferson

This article aims to compare the two opposing ideologies of assimilation and self determination to find the best way to achieve a vibrant, healthy, culturally and prosperous indigenous society for both Aborigines and Torres Strait Islanders.

Assimilation of one people into the society of another is generally referred to as "cultural assimilation". This form of assimilation is defined as "*an intense process of consistent integration whereby members of an ethno-cultural group (such us immigrants, or minority groups) are "absorbed" into an established, generally larger community. This presumes a loss of many characteristics of the adsorbed group*"[1].

Bringing about assimilation requires a holistic approach involving the political, social, cultural, legal and economic aspects of society. Aboriginal economic activity has taken many forms including living off the land, seas and waters. It includes income from sale of arts and crafts, and with greater ownership of land, royalty and lease payments. Subsistence hunting and gathering and barter as an economy have been savagely eroded by the European cash economy. The greater the Aboriginal participation in the workforce the greater is the acceptance of the capitalist economy on Aboriginal lives. Welfare payments are said to substitute for employment, and such payments also introduce beneficiaries to the cash economy. Our participation in the cash economy has brought about its own changes.

The Aboriginal political structure used to embrace levels of authority through Elders and certain family members, and law and order (generally referred to as customary law).The order of authority reflected the culture and lifestyle. Australia has offered Aboriginal representation a virtual take-it-or-leave-it participation in Australian elections, requiring we accept the parliaments are supreme authorities over Aboriginal structures and being citizens of the new nation at the expense of Aboriginal sovereignty. Indeed, we are told our participation on electoral roles implies we accept the legitimacy of parliaments over our peoples. Our views on our political status whether as a people or citizens; issues of who gives decisions that affect us legitimacy; and even whether our social aspirations are caught up in collective or individual rights are all deeply affected by the political system

The impact the police and the courts have on Aboriginal behaviour and civil rights of Aborigines is profound, well beyond notions of law and order. Acquiescing to the jurisdiction of the courts is effectively legitimising the political system under which or through which the courts and police operate. How many lawyers advise Aboriginal clients of their human right to contest jurisdiction?[2] Submitting to the legal processes is another tool that aids the European political and economic systems shape the social and cultural thinking of Aborigines. Schools teach Aboriginal children to speak English and not their native tongue; property rights are decided according to European concepts (native title is an invention of British law and subjugates Aboriginal land ownership) and the general social order is very much a white one (why can't Aborigines just be like us?).

[1] http://en.wikipedia.org/wiki/Cultural_assimilation

[2] Walker v New South Wales [1994] HCA 64

It is like the coke bottle in "The Gods Must Be Crazy". Minor interference with a culture can make profound difference. Major and imposed interference on a culture can destroy it. How many of us still speak our languages, know the symbols of our religion and fully appreciate the heritage to which we belong?

Focusing on the importance of religion to mid-east societies invaded over the centuries, Bernard Lewis wrote:

"… all civilised ancient religions were initially ethnic, became civic and political, and in due course perished along with the polity which had maintained their cult. There was one exception to this rule…which survived the destruction of its political and territorial base, and managed to live on without either, by a process of radical self-transformation. This was the process …which [saved] the Jews."[3]

Lewis' point is that some societies and cultures can adapt to the culture of the invader without losing its character. So where a group's connection to an area of land, or language or religion, merely defined the ethnicity of the group the invasion does not mean the elements that distinguish the group from others are necessarily threatened. This flexibility describes the survival of Gypsies in Europe as one example, and the Jews as another. In some instances the civic administrators of the invaded made themselves indispensible to the collecting of taxes and notifying the public of policy changes for the new regime.

But what happens when the nature of the invaded society depends for its existence on its territory; where the political organisation, the laws and the religion which shape the social and cultural content are inextricably intertwined so that one cannot properly function without the other? Put another way, how can Aboriginal society maintain its distinctiveness where the removal of one card makes the whole deck collapse like a deck of cards?

Aboriginal communities are inextricably linked to particular geographical areas where language and cultural beliefs are unique to that place. As the invader takes over the lands and replaces the old institutions and language with its own, much of "Aboriginal ways" will be subsumed within the civic and political life of the invader, and is more likely to disappear. New values may be adopted as a survival tool but the alteration of the society and its values is significant.

This is a real issue for the two indigenous peoples of Australia where our historic nomenclature has all but been destroyed with geographic regions, including rivers, waters and mountains renamed. Important symbols of religion and culture have been removed to museums.

Gradual erosion of Aboriginal values and cultural knowledge threatens the long-term distinct identity of the indigenous groups. In less than one hundred years our identity has been altered from our language groups to "Aboriginal" to now "indigenous Australians". The political preaching of "oneness" by schools, media and politicians also undermines indigenous identity. The once sharp line that distinguished Aboriginal identity from that of whites is blurred by the widespread use of the politically correct phrase "we are all Australians".

[3] Bernard Lewis, The Middle East, Phoenix Press, 2000 at p30.

Adoption of the dominant white culture and language, participating in the civic and political life of the new nation, all place stresses on indigenous identity. The ability of government to impose funding conditions on life support monies can also be used as a tool of assimilation.

There are a handful of Aboriginals handpicked by John Howard and who are all on his payroll who see nothing wrong with absorption. They go too far however when, from their positions of considerable wealth, advocate that governments should punish the vulnerable by abusing the government's power over welfare income to engineer social behaviour.

The influences of a dominant culture can be restrained with political will and planning. Under Prime Minister, John Howard, the issue of distinctiveness of indigenous peoples has never been more under threat. At the National press Club address on January 25th 2006, Mr Howard described what he saw as the superiority of the cultural and political imperatives of his race:

"Most nations experience some level of cultural diversity while also having a dominant cultural pattern running through them. In Australia's case, that dominant pattern comprises Judeo-Christian ethics, the progressive spirit of the Enlightenment and the institutions and values of British political culture."

There was no hint of concern for the destruction to Aboriginal society of his full absorption policy *"…we reform and evolve so as to remain a prosperous, secure and united nation. It also means we retain those cherished values, beliefs and customs that have served us so well in the past*".

Advocates of assimilation cannot complain the ideology has never been given a chance to deliver. Assimilation was given one last major thrust during a decade of John Howard. The problems have got worse, not better. Most Aboriginal leaders would protest the accusation they support assimilation even though they openly promote white domination through laws and other mechanisms.

Professor Marcia Langton, one of Noel Pearson's colleagues at the extreme right-wing Cape York Institute, denounced WA electoral laws because they made it compulsory for white people to participate in white elections but did not make it compulsory for blacks.

"*Still today, the right of Aboriginal people is inferior to that of other Australians. For Aboriginal people in Western Australia it is not compulsory to vote, while for other Australians it is*."[4]

The ideological platform governing funding and entitlements produces remarkably different results. Assimilation, for example, focuses on better improvements to schools and jobs but sees restitution of lost lands and separate laws as impediments to assimilation. The assimilation ideology has been with us for a long time. Self determination has not.

Self determination is often trivialised by its opponents, with governments and conservative commentators dismissing it as an "outdated rights agenda". By necessary implication, this negative view is that a people dispossessed of land, authority and culture can only succeed if those rights are abandoned. Entering white society as beginners in a new nation is seen as the Holy Grail. By starting from scratch and learning to be jackey-jackey white folk the

[4] The Alfred Deakin Lectures, My 20 2001: http://www.abc.net.au/rn/deakin/stories/s300007.htm

assimilation view is that Aborigines will have little need for Aboriginal cultural values or sense of heritage which are an impediment to the process of assimilation anyway.

Critics of self determination further trivialise the concept by pointing to Aboriginal advisory bodies such as ATSIC, the Howard government's NIC and the many smaller advisory groups dealing with education, criminal justice, repatriation and so on, are forms of self determination. Clearly they are not.

Self determination means what it says: people deciding their destiny themselves. Aboriginal groups that advise governments, regardless of whether the advice is rejected or accepted, are not examples of self determination. One of the very reasons the process of self determination is available to colonised and oppressed peoples is to put an end to the domination of those groups or peoples by the colonising powers. By acting in a subordinate capacity advisory groups do not achieve self determination, they perpetuate the domination.

Assimilation of Aboriginal and Torres Strait Islander peoples into Australian society is based on the notion that the behaviour, outlook, aspirations, institutions and culture of white society must be adopted by the two indigenous peoples. Behind the demand that a distinct people must assimilate in the political, economic and cultural life of white society lays the belief in the superiority of the white race over Aboriginal.

It is also callous of the Australian government to take advantage of the vulnerability of Aboriginal people to impose its will. Apart from the deliberate exclusion of Aborigines from engaging in white society in the early Australian constitution, history shows Australian policy has long been established on rejecting any support for Aboriginal independence. The views white Australia has had about where the best interests of Aborigines rests have long been rammed down the throats of Aboriginal people.

Aborigines were viewed as trespassers in our own lands after the initial violent dispossession by the British. The British colonisers established their own white nation in 1901. We were formally excluded on the understanding the Aboriginal race would die out if left alone. When the evidence of the resilience of Aboriginal people defied the hopes of our demise, our children were stolen in an attempt to speed up the assimilation policy. If attrition failed, then use force.

The campaign by black and white activists to end the perceived racist provisions of the Australian Constitution resulted in an overwhelming majority of whites supporting the 1967 referendum. As a conciliatory gesture, it was perhaps Australia's finest hour. However the sentiment and intent behind the referendum have not produced the necessary change, probably because throughout the history of race relations in Australia, white society has assumed its inherent right to dominate.

This assumption became more pronounced in public policy under John Howard. Howard changed the face of Australia in the shape of his own image: politically conservative and driven by economic imperatives without a compassionate bone in his body for the disadvantaged. The nature and character of Australia as a white nation did not change: that remained constant. Howard's hardline approach enabled him to stir up the emotions of those more comfortable among people of a like culture, skin colour and European values. Without making a formal declaration, Howard reintroduced the white Australia policy.

During Howard's time, with the connivance of the ALP and selected Aboriginal "advisers", the Aboriginal legal services were tendered out, individuals had their dole confiscated, children threatened with compulsory cavity medical examinations and the army used to invade Aboriginal communities in the Northern Territory. The federal parliament's difficulty in distinguishing its treatment of Aboriginal people from its more favourable treatment of whites was highlighted by Heather Sculthorpe in her Betty Pybus Memorial lecture. Heather said-

"…by sending in the police and the military, the Australian Government implicitly recognised the status of Aboriginal Australia as an entity separate from white Australia. A nation cannot invade itself. That is no doubt a reason for the Howard Government's determination to call the invasion a "response to a national emergency", an "intervention", an "arrangement" – anything but an invasion."

Imagine Aboriginal people being materially wealthy, with a good standard of living.
Imagine we are in charge of our day to day activities, and our destiny.
Imagine our languages are well preserved, our cultural values intact, and the people feel enthusiastic about life's prospects.

How do we get there from here?

John Howard puts it bluntly: the best hope for Aborigines, he says, is to be fully absorbed within Australian society. He means white Australian society.

There are many Aboriginals who agree with the Howard philosophy. Instead of questioning how an inherently racist ideology can provide a sound social and political pathway to Aboriginal success, they are blinded by their own individual successes in white society- good houses, high paying jobs (in every case, coincidentally, on the government payroll), boating titles like "professor" or "Dr." before their name and often promoted by mainstream media as model "indigenous Australians". They are proudly Australian, and blame other Aborigines for failing to achieve similar results.

They should heed the famous words of Goethe: *"There are none so enslaved as those who falsely believe they are free."*

The contradictions of the black assimilationists are in preferring the words of the Howard preamble proposal unable to consider whether the Constitution legitimately applies to Aborigines. They also:

- condemn the decisions made by politicians that affect Aborigines but not the right of politicians to make the decisions;
- want law reform while accepting the legitimacy of the white law;
- condemn the invasion by whites but want to be part of the nation built from the invasion;
- They agree with Aboriginal advisers to government but not Aboriginal government. They believe we have a right to be governed, but not to govern.

These Aboriginal people avoid using the word "assimilation".

The assimilation policy reflected Howard's, and by necessary implication, his handpicked group's belief in the superiority of white people. I doubt Howard cared much about Aboriginal society ever reaching its true potential: he was more concerned about the needs of the white electorate- note his apology to the battling mortgage belt but not to the Stolen Generations.

One major problem with the assimilation strategy is that it cannot deliver the goods. The claim that Aboriginal entrepreneurs will flower after getting better education is as unrealistic as it is preposterous. The idea that assimilation will provide a materially rich as well as culturally rich Aboriginal people is a contradiction in terms.

Whatsmore, name the politician that will set aside the needs of 20 million for 400,000! We have been waiting empty handed in the cue for 200 years while white Australia has grown and prospered. What is to be found in the nature and character of Australian society that leads some to believe it will suddenly stop its obsessive self interest and, out of goodwill, promote the interests of Aborigines above the 20 million?

The conclusion of the Deaths in Custody Royal Commission finding rams home the point. In its final Report the Commission stated:

"But running through all of the proposals that are made for the elimination of these disadvantages is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-Aboriginal society and that the disadvantage is the product of that domination. The thrust of this report is that the elimination of disadvantage requires an end of domination and empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands. "

I emphasise- The disadvantage is the product of the domination.

How can more domination produce better results?

Any political structure designed to deal with Aboriginal and Torres Straits aspirations must reflect the cultural values of the groups. The type of political representation is debatable but not but the need for representation. While Australian democracy provides an imperfect representative system for its people it still is owned by its people and, in the absence of something better, provides a say over who governs for them. Where is the indigenous equivalent?

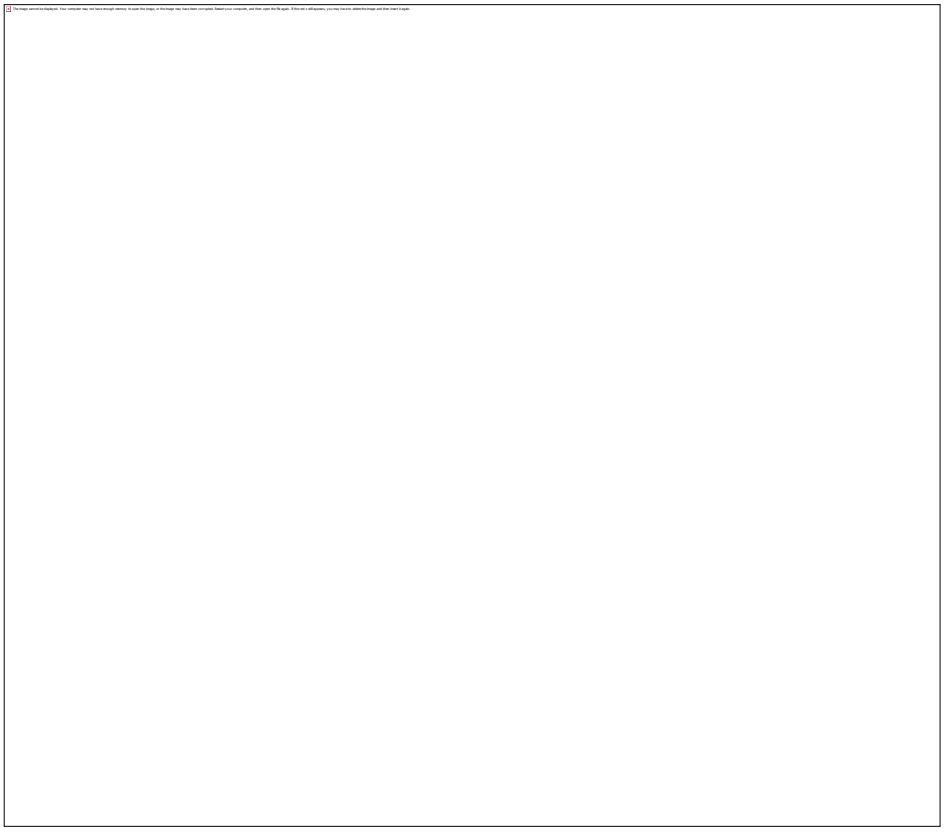
Is it the case we are always to be governed but never to govern? After all, Australia decided it no longer wanted to be governed by someone else and broke away from British rule in 1901. Australia's break with Britain was bloodless. For the issue to be taken up the Aboriginal movement has to be reinvigorated, taking lessons from those who were bashed at APEC, or the Burmese bashed by Australian police for protesting the violence against Burmese by the junta. We would need to reclaim the strategies of the black movement that fought for and won land rights, better access to services and so on.

The right to self-determination is the right of a people to determine its own destiny. In particular, the principle allows a people to choose its own political status and to determine its own form of economic, cultural and social development. Exercise of this right can result in a variety of different outcomes ranging from political independence through to full integration

within a state. The importance lies in the right of choice, so that the outcome of a people's choice should not affect the existence of the right to make a choice.[5]

Looking to Canada

We need a secure land territory. The haphazard approach to dispossession is reflected in the way Australia provides a remedy. There are land rights laws, native title and purchase of lands by the Commonwealth, none of which offers a comprehensive outcome. In Canada, Inuit inhabit vast areas of Nunavut, the Northwest Territories of Canada, the coast of northern Labrador and about 25 percent of Northern Quebec. Traditionally, they have lived above the tree line in the area bordered by Alaska in the west, the Labrador coast in the east, the southern tip of Hudson Bay in the south and the High Arctic Islands in the north.[6]



The territory of Nunavut (which means "*our land*") stretches some 1.9 million square kilometres and is nearly one-fifth the size of Canada.

The Nunavut Land Claims Agreement is the largest Aboriginal land claim settlement in Canadian history. When the Agreement was signed, legislation was also passed leading to the creation of a new territory called Nunavut on April 1, 1999. The new territory has a public government serving both Inuit and non-Inuit.

[5] Article I of the Charter of the United Nations; International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States adopted b the UN General Assembly in 1970, 2, the Helsinki Final Act adopted by the Conference on Security and Co-operation in Europe (CSCE) in 1975, 3, the African Charter of Human and Peoples' Rights of 1981, 4, the CSCE Charter of Paris for a New Europe adopted in 1990, 5, and the Vienna Declaration and Programme of Action of 1993 and Article 3 Declaration on the Rights of Indigenous Peoples

[6] www.ainc-inac.gc.ca/pr/info/info114

The Nunavut Land Claims Agreement gives title to Inuit-owned lands measuring about 350,000 square kilometres (of the total area of Nunavut of 1.9 million square kilometres), of which about 35,000 square kilometres include mineral rights.[7]

Capital transfer payments of $1.148 billion, are payable to the Inuit over 14 years. A share of federal government royalties for Nunavut Inuit from oil, gas and mineral development on Crown lands is also payable to the Inuit.

The Nunuvut land settlement offers a real model to be pursued in Australia. We should seek the return of all crown lands, subject to existing interests. That means we will once again own the lands subject to current uses such as pastoral leases, dam sites, power schemes, mining and public utilities. Income derived from those interests would belong to Aboriginal people.

The political structure

According to the 2006 census only 24% of Aborigines lived in remote or very remote areas. Almost one in three people in the Northern Territory (32%) were estimated to be of "Indigenous origin". In all other states/territories less than 4% of people were estimated to be of "Indigenous origin". The low portion of indigenous people in Australia's more populated areas means a straight duplication of a Nunavut type arrangement would not work. In a sense the north west territories self government of the Nunavut is not race based but is based on democratic majority rules. Nunavut is the sizeable majority.

Another model in Canada may be more useful for our political needs where a territory is carved out to provide self determination for Aboriginal people. The Nisga'a territory consists of 1,000 square miles in and around the Nass River Valley, Observatory Inlet, Portland Inlet and the Portland Canal, all located in north-western British Columbia. The area is much smaller than that of Nunavut, and smaller than many Aboriginal owned land areas in Australia. However the treaty struck with Nisga'a, British Columbia and Canada has many features attractive to a settlement that could be made with indigenous peoples in Australia.

Nisga'a government is divided into two groups: the Nisga'a Lisims Government and the Nisga'a Village Governments intended to govern the Nisga'a Nation and the Nisga'a villages respectively. The Nisga'a Lisims Government is responsible for intergovernmental relations between the Nisga'a Nation and Canada or British Columbia. Each of these governments is a separate legal entity which can enter into contracts and agreements, acquire and hold property, raise and spend money, sue and be sued, and do those things ancillary to the exercise of its powers. The Agreement provides for the creation, continuation, amalgamation, or dissolution of Nisga'a villages.[8]

Aboriginal communities jealously guard their local autonomy, a view that should be encouraged. Vesting proper authority at the local level leads to better community

[7] http://www.polarnet.ca/polarnet/nunavut.htm

This brief history and subsequent background is taken from the judgement in Campbell v BC & Nisga a nation www.courts.gov.bc.ca/jdb-txt/sc/00/11/s00-1123.htm

organisation and any broader national Aboriginal positions can be influential rather than prescribed for local communities. The Canadian Nisga'a arrangement provides for just that.

The Treaty also provides for the creation of Nisga'a Urban Locals, a provision designed to ensure that the Nisga'a who live away from the Nass Valley in three specified areas (Greater Vancouver, Terrace and Prince Rupert/Port Edward) will be able to participate in the Nisga'a Lisims Government. This aspect is particularly important in ensuring Aborigines living in urban Australia are not disenfranchised from participating in Aboriginal self determination.

The Nisga'a Government has power to make laws in a number of different areas which can be divided generally into two groupings. In the first category, when Nisga'a law conflicts with federal or provincial law, the Nisga'a law will prevail, although in many cases only if it is consistent with comparable standards established by Parliament, the Legislative Assembly, or relevant administrative tribunals.

Generally speaking, the subjects in this category are matters which concern the identity of the Nisga'a people, their education, and the preservation of their culture, the use of their land and resources, and the means by which they will make decisions in these areas. As noted, however, some of these areas remain subject to comparable provincial standards. For example, adoption laws must provide for the best interests of the child. The provision for Nisga'a control of education is subject to various comparable provincial educational standards.

This represents a significant advancement over the current arrangements in Australia where every element of education, including which language we are taught in, is predetermined by whites. The use of the lands we have had returned is regulated according to economic and legal policies of whites and our cultural practices overly regulated by commercial fishing laws, environmental and recreational laws.

Other jurisdictions of the Nisga'a government have specific matters carved out and reserved to the Crown, or to laws generally applicable in the subject area. For example, the right to regulate the use and development of Nisga'a Lands rests with the Nisga'a, but rights of way held or required by the Crown are subject to special provisions. The right to regulate businesses, professions and trades on Nisga'a lands rests with the Nisga'a, but it is subject to provincial laws concerning accreditation, certification and regulation of the conduct of professions and trades.

The Nisga'a powers over business would be welcome here especially in the current climate of debate about whether NT land rights includes the permit system. It should be noted that whereas freehold owners automatically can exclude trespassers, NT land owned by Aborigines requires the permit system to obtain the same exclusion rights. Without the permits, the land ownership of Aborigines in the NT is less than that of freeholders and is therefore discriminatory.

In the second classification of jurisdiction, when a Nisga'a law conflicts with federal or provincial law, the federal or provincial law will prevail.

While the Treaty defines the right of the Nisga'a to harvest fish and aquatic plants in Nisga'a fisheries areas, all the fisheries rights of the Nisga'a are expressly subject to measures that are necessary for conservation and to legislation enacted for the purposes of public health or

safety. Nisga'a peoples' harvest of fish is subject to limits set by the federal Minister of Fisheries. Any laws made by the Nisga'a government concerning fish or aquatic plants harvested by the Nisga'a are subject to relevant federal or provincial laws.

The Nisga'a government may make laws concerning assets the Nisga'a Nation, a Nisga'a village or Nisga'a corporation may hold off Nisga'a lands, but in the event of a conflict between such laws and federal or provincial laws of general application, the latter prevail.

Similarly, while the Nisga'a may make laws concerning the sale and consumption of alcohol (intoxicants) on Nisga'a lands, they are subject to federal and provincial laws in the area in the event of conflict.

British Columbia retains the right to licence or approve gambling or gaming facilities on Nisga'a lands, but the Agreement provides that the province will not do so except in accordance with terms established by the Nisga'a government. Such terms, however, must not be inconsistent with federal and provincial laws.

The NT Land Rights Act 1976 provides statutory inalienable communal title to Aboriginal people although the right to exclude inherent in freehold title is expressed under the Act in the form of a permit. Access for mining and other developments must be approved and terms negotiated where approval is given. Royalties are payable via a trust fund. The land rights law does not allow land councils to decide who its members are, or the type of education or how culture is to be preserved. Unlike Nisga'a the NT Act does not provide any form of right to regulate businesses, professions and trades on Aboriginal lands nor is there any power to deal with assets off Aboriginal lands. Closer to home there is a political arrangement that embraces more principles of self determination that could complement the Nisga'a arrangement applying in Australia.

Norfolk Island is situated some 1,600 kilometres north-east of Sydney and became home to the descendants of the Bounty mutineers when Pitcairn Island had to be abandoned. The resident population of Norfolk Island now numbers almost 1,800 and the Island caters for some 35,000 tourists annually, each staying an average seven nights.[9]

Norfolk Island is a territory of Australia administered by the Commonwealth and was granted a significant measure of self-government in 1979. The Island assembly and government have powers far beyond those of the Australian states. They control not only what falls within state jurisdiction but also social security, taxation and immigration and settlement subject to limited oversight by the Commonwealth.

The Islands immigration regime is distinct from that applicable throughout the remainder of the Commonwealth. The Commonwealth's Migration Act 1958 has no application on Norfolk Island. Instead immigration, including immigration by Australian citizens from other parts of Australia, is regulated by the Norfolk Island Immigration Act 1980.

Entitlement to vote in Norfolk Island Assembly elections is also different from entitlement to vote on the mainland. Entitlement to vote on the mainland is dependent on Australian citizenship. Entitlement to vote on Norfolk Island is dependent on length of residence rather

[9] This and the following background material were largely taken from: Territorial Limits: Norfolk Island's Immigration Act and human rights, Human Rights and Equal Opportunity Commission 1999.

than citizenship, ancestry or immigration status. A person is eligible to enrol if he or she has been present on Norfolk Island for a total of 900 days during the four years immediately preceding the date of the application to enrol.

Australian income tax and other federal taxes such as sales tax are not payable on Norfolk Island. Instead, the Norfolk Island Government levies a range of local taxes and imposts but it does not tax wealth or income.

Of interest to the movement towards Aboriginal self determination is not just the fact that Commonwealth legislation has granted powers to a group in a particular region of Australia to raise taxes and regulate entry to the island through passports and visas, but also that the arrangements sit comfortably with other political arrangements in Australia. The resistance to similar arrangements for TSI and Aboriginal peoples is inexplicable.

We need an Aboriginal government. Some people talk of a stand alone Aboriginal government, while others a seventh state of Australia. The detractors complain there can only be one law and one government in Australia. As we know, there are six state and two territory governments operating in Australia each applying their own laws, together with a federal government whose laws coexist with those of the states and territories.

In addition to Norfolk Island there are 673 local governments that also coexist with the States, Territories and Commonwealth governments. Is there no room for an Aboriginal government?

Applying Entry categories of Norfolk Island to Aboriginal lands

Everyone is required to hold a permit to enter and remain on Norfolk Island with the exception of residents and certain specified persons such as members of the armed forces, diplomatic or consular representatives. A person without a valid permit is a prohibited immigrant and may be fined or deported. There are three entry permit categories: visitors, temporary entry permit holders and general entry permit holders. In addition, the Act provides for the issue of certificates of residence.

Visitors

Visitors who enter Norfolk Island are deemed to hold a temporary entry permit for a maximum of 30 days. If a visitor wishes to stay more than 30 days he or she needs to apply for a written permit. This permit may be granted for up to a further 30 days. However, under no circumstances can the permit be extended beyond 120 days from the date of original entry.

Visitors are not permitted to work or participate in a business on the Island. Those who do so in breach of their permit restrictions will have the permit cancelled and will become prohibited immigrants. The Executive Member may then declare, by order that the person is to be deported.

Temporary entry permits

A temporary entry permit is designed for short-term residence and is usually granted for employment purposes only. It may be granted for up to one year and may be extended for up to three years.

Prior to granting a temporary entry permit the Executive Member must have regard to:

· The availability of employment
· The person's character
· The person's health
· Whether the person has a ticket to leave the Island and
· Whether the person is likely to impose any burden on Island facilities.

A number of conditions may be placed on the temporary entry permit holder to limit his or her activities. The permit may place conditions on employment, involvement in a trade or profession, undertaking scientific or cultural research or any matter that the Executive Member considers beneficial to Norfolk Island. If a holder of a temporary entry permit is in breach of a condition to which the permit is subject, the permit may be deemed to have been cancelled. Where the permit is cancelled the person becomes a prohibited immigrant and may be deported.

It is essential that we have a lot more of our land back and that the rights we exercise over those lands are exclusive. Coupled with the Nunuvut compensatory scheme of $1.148 billion over 14 years, we would be getting closer to the economic base we so desperately seek. It is senseless to talk of making Aborigines adopt the mobility and earnestness of the protestant ethic as creating an Aboriginal economic power base. That philosophy dooms the Aboriginal communities to individual exploitation, and delivers categories of rich and poor. That is no ideal. And we need to get away from the negative childish solutions put forward by the Cape York Institute of punishing the victims.

Compensating departure scheme

In 1990 amendments to the Commonwealth *Immigration Act* led to the establishment of the compensating departure scheme (known unofficially as the 1-in-1-out scheme) from 9 April 1990. As a way of controlling permanent resident numbers and maintaining economic activity, Norfolk Island run a scheme that allows a resident or a general entry permit holder to sell a substantial asset such as a home or business to an incoming person.

This person who might otherwise only get a temporary entry visa would be guaranteed a general entry permit on the condition that residency entitlements were surrendered by the vendor. The facility was designed to ease the hardship experienced when a person's departure from the Island was dependent on the disposal of a substantial asset that could not be sold locally at a reasonable price and the vendor was unable to await the entry of a purchaser through the general entry permit quota queue.

Aboriginal people who have a traditional right to enter, use and occupy Aboriginal land are entitled under section 71 of the Aboriginal Land Rights Act to enter, use and occupy that land. The right is subject only to the proviso that they do not interfere with the use or enjoyment of an estate or interest in land granted to a non-Aboriginal person, for example, to the Department of Health for a health clinic.[10] Before Howard's NT Emergency Intervention law of 2007, which repealed the permit section, other members of the general community

[10] Discussion Paper Land Rights Laws, Frith Way, http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/dp4.html#Heading25

were required to have a legal right to enter Aboriginal land, otherwise they would have committed an offence.

The Norfolk Island entry scheme could be adopted in modified form by Aboriginal communities and by a pan-Aboriginal government administering Aboriginal territory as a way of preserving local values especially where large economic activity such as mining is close by communities.

We need to get moving. Take a case in point. Mining giant BHP wants to stop other mines using its rail link from the Pilbara to the ports. At stake is a share in the $18 billion resource boom. While the big companies fight it out in the courts I was struck by a comment from an Aboriginal Elder, Neil Finlay in 2005. He said:

"*Our country has been mined for iron ore for 30 years, making billions of dollars worth of profit for Rio Tinto and Robe River and nothing has been done for us while our people live in poverty at their door and die twenty years before their time*".

While the companies go about profit making the real land owners are trivialised and ignored. Through non-violent disobedience, we should sit on the train rails, stopping the trains from moving, until such time as the companies do justice to the local people and support economic arrangements with Aboriginal people, not governments.

The Quisling type engagement by Aboriginals propped up by Howard is a past era. We have already seen the invasion of communities by the army and police and acquisition of Aboriginal lands in the NT, and the taking away of a family's income forcing people to beg for groceries as a consequence of that group's collusion with government. Is this the contemplated benefits of assimilation?

At issue is not just a better standard of living, or a share of power: we have a right to dignity.

Michael Mansell
Aboriginal Provisional Government
9th November 2007