More than Sorry: Indigenous Policy under Howard and Rudd

David Carter*

Issues concerning Aboriginal and Torres Strait Islander peoples, land rights, Native Title, colonial dispossession, and the continuing history of unequal race relations have been at the top of the Australian Studies agenda in Australia for the last decade. More immediately, the period since the middle of 2007 has been such an extraordinary one for indigenous policy that I felt this was the topic I simply had to address on the occasion of the Australian Studies Association’s annual conference. When I was asked to suggest a topic, the sense of shock and confusion prompted by the Howard government’s intervention into Aboriginal communities in the Northern Territory was still being felt, while the direction that the newly-elected Rudd Labor government would take with this policy — having largely supported it while in opposition — was still unclear.

What I want to do in this paper is to explain the political and intellectual context for the Howard government’s dramatic intervention in the Northern Territory, the details of the intervention itself, the reactions it produced, and the responses of the Rudd Labor government since coming to power.

Before I begin let me give some factual detail about where Indigenous Australians live in Australia today. This is important, as the intense media focus on remote Aboriginal communities in the Northern Territory can give a false impression of the actual distribution of the indigenous population and, more significantly, of the diversity of contemporary indigenous lifestyles. It is also important to explain that the program of intervention in Aboriginal communities announced by the Howard government in June 2007 concerns only the Northern Territory. In the Australian federal system, a Territory does not have the same legislative status as a State. Although self-governing, the Territories are still under Commonwealth jurisdiction. Therefore the federal government can intervene directly in the Northern Territory’s affairs and pass legislation for the Territory in ways that it is unable to in relation to the States, which is exactly what it did do in the case of the so-called intervention. The particular context of the intervention, then, could give rise to the impression that all Aborigines in Australia live in remote communities and suffer the extreme conditions which are experienced in some of these communities. But of course this is not the case. Indigenous people live across all parts of the nation, in urban and suburban areas and in country towns, as well as on declared Aboriginal land.

According to Australian Bureau of Statistics figures, approximately 32 per cent or about one-third

*Professor of Australian Literature and Cultural History, School of English, Media Studies and Art History, The University of Queensland
of the indigenous population lives in Australia’s major cities. The majority, around 43 per cent, live in regional or rural areas. Only 26 per cent live in remote or very remote areas, mostly in the Northern Territory, northern and western Queensland, and the north west of Western Australia. Sixty-nine per cent of the total Australian population live in the major cities and only two per cent live in remote areas, so it is clear that compared to the general population Indigenous Australians are less likely to live in urban areas and more likely to live in regional and remote Australia. Nonetheless, it would be very misleading — but a common mistake — to imagine that all Aborigines live in the kind of remote communities targeted by the Howard strategy. Seventy-five per cent (three-quarters) of the indigenous population in fact lives in cities, towns and settled rural areas.

II

One of first things I try to do with my international students, whether overseas or in my very “multi-national” Australian Studies classrooms back home, is to try to make them understand the fundamental role of indigenous issues to Australian history, culture, politics and law, indeed to the very sense of Australian nationhood. For many international students this can be a difficult point to grasp — why so much attention to a minority group that represents less than three per cent of the total Australian population? The answer, of course, has to do with the position of Aborigines and Torres Strait Islanders as Australia’s indigenous peoples; that is, as the original owners and custodians of the land. The next point to explain is why this is a contemporary issue, not one that belongs to colonial history one hundred or two hundred years back. (I’d have to say this is a point I need to explain to some of my Australian students too.)

This contemporary focus can be explained by showing how indigenous issues have become increasingly present in Australian politics, culture and the law over the last three decades. Even in popular culture: it is rare these days to find a popular representation of Australia that does not include a significant Aboriginal element (as in the use of Uluru as a national symbol or the ubiquitous didjeridu music). This increased presence — and “present-ness” — of Aboriginality is due in large part to the pressures exerted by indigenous political and cultural movements themselves, whether through political agitation for the recognition of land rights and the right to self-determination or through the remarkable force of the contemporary indigenous arts movement. It is also due to the pressures exerted by non-indigenous Australians, since the 1960s especially, in the re-assessment of their own history and its implication in Aboriginal dispossession and disadvantage: on one level this has involved policy reform by governments, on another level the radical revision of Australian social and cultural history by scholars. Reforms within Australian law have had their own momentum in addressing previous injustices, often leading social opinion as well as following broader changes in understanding and values. If Australia’s changing relationship to Britain was once the central issue for histories of the Australian nation, the central issue these days is much more likely to be settler Australia’s relationship with its own indigenous peoples. The “national settlement”, we might say, has been “unsettled”.

At the heart of these issues is what I call the question of legitimacy: first, the understanding that in a moral and perhaps, too, in a strictly legal sense the nation was founded on an illegal process of
dispossession, of taking land and removing indigenous people from land; second, the recognition that the consequences of this dispossession are still being worked out in Australian society, for example in the startling inequalities faced by Aboriginal Australians compared to the rest of the population; and third, the feeling that the nation has not yet found the right forms, the right words or the right institutions, for acknowledging either past dispossession or present disadvantage. The Australia 2020 Summit, initiated by the new Prime Minister and held in April 2008, concluded with a renewed call for a Treaty or some other form of constitutional recognition of the status of Australia’s Aboriginal and Torres Strait Islander peoples. As has been said by many commentators in recent times, the relationship between Indigenous and non-indigenous Australians remains the most significant piece of “unfinished business” for the nation.

Indeed a number of commentators have referred to unfinished business concerning the moral legitimacy of the nation. To illustrate this point let me quote from two recent histories. In the final paragraph of his 2003 book, Rights for Aborigines, Bain Atwood concludes:

There is still enormous inequality between most settler and Aboriginal Australians. There remains a crying need to address historical injustice and contemporary disadvantage by recognising “rights for Aborigines” in all their forms — civil, Aboriginal and indigenous. The moral legitimacy of the nation depends on this. Only when the descendants of the original settlers, as well as later migrants and their descendants, take responsibility for the past-in-the-present by addressing the continuing legacies of the past, will any of us begin to be truly at home in this world.3

And Mark McKenna, in Looking for Blackfella’s Point, writes: “in the last decades of the twentieth century, the history of Aboriginal Australians became the vital issue affecting the national identity of non-Aboriginal Australians and the moral legitimacy of the nation.”4

During the 1980s and through much of the 1990s there was a broad consensus across the liberal centre of Australian politics and public life around this viewpoint: whatever disagreements there were about the details of land rights or welfare policies, it was agreed that a process of acknowledgement, healing and reconciliation was needed for the benefit, not just of Indigenous Australians, but for the nation as a whole. This was dramatically illustrated in the year 2000, when many thousands of Australians joined in Sorry Day marches around the nation, although by this time the large numbers also represented a “protest vote” against the positions adopted by then Prime Minister Howard, especially his refusal to say sorry. Earlier the key term had been “reconciliation”. While its exact meaning remained vague, “reconciliation” was not just an abstract concept but a formal process launched by the Hawke Labor Government in 1991 — with bipartisan support — via the establishment of a ten-year program to be managed by a Council for Aboriginal Reconciliation. This initiative followed the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1987-91). The Council was to initiate local reconciliation groups across the nation, which it did with some success, and, most publicly, to deliver a formal document of reconciliation, a statement of principles and beliefs, to the federal government in 2001, at the end of its ten-year term. This was a very middle-of-the-road procedure — nothing like the South African Truth and Reconciliation Commission and a

---

NII-Electronic Library Service
long way back from the talk of a Treaty which had emerged in Australia in the 1980s — but even so it appeared to some to be going too far (more on that a little later).

The rising momentum of indigenous politics, their move to centre stage, was greatly increased by two other events of major national significance: first, in 1992, the famous High Court judgement in the case of *Mabo v. Queensland* which recognised the existence of Native Title (followed by the Keating Government’s *Native Title Act* in 1993); and in 1997, the delivery of the Report of the Human Rights and Equal Opportunity Commission into the “separation of Aboriginal and Torres Strait Islander children from their families” — the equally-famous *Bringing them Home* report into the Stolen Generations. To this mix was added the *Wik* case of 1996, which determined that pastoral or mining leases — the main form of land tenure in much of outback and remote Australia — did not necessarily extinguish Native Title. Pastoralists, farmers and miners felt threatened by this judgement, although the judgement itself made clear that leases would take precedence should conflict arise.

The key point in understanding the political fortunes of all these developments is that they fell either side of the election of the Howard government in 1996. The Council for Aboriginal Reconciliation was established by Labor in 1991 but its report was delivered to the Howard government in 2001. Paul Keating’s Labor government gave legislative force to the *Mabo* judgement in 1993 but it was the Howard government that responded to *Wik* by passing the *Native Title Amendment Act* in 1998 embodying Howard’s “ten-point plan” which significantly shifted the balance of power and rights away from indigenous owners to pastoralists. And while the enquiry into the Stolen Generations was established by the Keating government in 1995, again its report was delivered to the Howard government.

John Howard has often been characterised as above all a pragmatic politician who was driven less by a vision or principle than by whatever it took to remain in power. While this view has some validity, it seriously underestimates the coherent and fully-articulated ideological position to which Howard subscribed and still subscribes (as he made clear in a recent speech to a neo-conservative American think-tank). Howard in his own way is an intellectual, in the sense that for all his pragmatism he was quite consciously engaged in an ideological struggle against a raft of liberal and left-liberal — or “postmodern” — views which he saw as having prevailed during the Hawke and Keating years and which he believed were dangerous for the nation, for its sense of tradition, unity and pride. It was no accident that education and history (history writing and teaching) became key battlegrounds during the Howard years, for these were identified as the areas where a left-liberal or postmodern agenda had, from the conservative perspective, distorted a true sense of identity, citizenship, and progress.

There was nothing all that remarkable about Howard’s neo-liberal market economics and conservative social policies, for such views were widely shared internationally and, indeed, on both sides of Australian politics. What distinguished Howard’s position was his commitment to this fully articulated discourse of nationhood: he was not simply concerned to protect pastoral, mining or business interests but equally to protect a particular understanding of Australia’s history and traditions, its moral character, and its sense of national achievement. However opportunistic his
political manoeuvring, it would be a mistake not to see his belief in this vision of Australia as coherent and completely genuine.

It was, of course, a vision for Australia that was deeply suspicious of an idea such as multiculturalism, a term Howard banished for the first few years of his tenure except where cultural diversity could be rendered as testimony to Australia's "tolerance" or as an image of "harmony". "Tolerance" and "harmony" were the government's key words when any such issues were raised; "tolerance", it was argued, was always-already part of the Australian tradition, therefore multiculturalism, seen in this minimalist way, was not a radical break from the nation's past just a continuation of our virtuous history. Otherwise, the Howard vision was profoundly uncomfortable with any serious idea of cultural difference. As such, it was also profoundly uncomfortable with the idea of separate indigenous rights or self-determination. As Judith Brett has argued in her analysis of the history of the Liberal Party, the kind of liberalism established by Robert Menzies in the 1940s and which remains at the heart of the Liberal Party, certainly at the heart of John Howard's conservative liberalism, was one based on the categories of family and nation, with the "neighbourhood" as the mediating middle term. By contrast it saw class interests as sectional interests only and therefore as divisive — the middle-class, for Menzies, was scarcely a class in the sociological sense as it embraced virtually the entire nation.

In an era of assimilation policy, Menzies scarcely had to consider questions of ethnic or racial difference, but for Howard, of course, these issues were unavoidable. Yet it appears that quite genuinely he could not see interests defined in terms of ethnicity or religion or in terms of indigeneity; he could not see them as anything other than sectional and divisive unless they were safely contained within an over-riding framework of what he liked to call "Australian values" or "core values". Thus his long Parliamentary history of opposition to the recognition of separate indigenous rights and to multiculturalism: his rejection of the idea of a Treaty, as Opposition leader, in 1987; his publicly-expressed unease about Asian immigration; his opposition to the establishment of ATSIC (the Aboriginal and Torres Strait Islander Commission, which his government abolished in 2004); his rhetoric concerning the threat to Australia's borders posed by "illegal immigrants" (which we can take as genuine); his shelving of the Reconciliation document when it was delivered to the government; his refusal to apologise on behalf of the Australian government for child removal policies; his enthusiastic take-up of Geoffrey Blainey's notion that Australian history was being distorted by so-called "black armband" history (i.e., histories that called attention to Australia's racist past); and in 2007, his government's refusal to endorse the UN Declaration on the Rights of Indigenous Peoples.

Indigenous issues had indeed moved front and centre stage in the 1990s, and Howard, in his own words following the Wik decision, thought the "pendulum had swung too far" (despite the fact that indigenous people were still the most disadvantaged group in Australian society). While in this instance he was referring specifically to the question of Native Title, there was a more general sense, for the government and for the Prime Minister in particular, that Indigenous Australians were being given too much moral or symbolic power on the national stage. Special treatment for the most disadvantaged group of Australians was reinterpreted to mean special privileges. Howard was profoundly opposed to anything remotely resembling a Treaty, to the special status of Native Title,
even to the formal acknowledgement of reconciliation. He split what he called "symbolic reconciliation" from "practical reconciliation", thereby creating a division where none need exist between "symbolic" issues such as an Apology or Land Rights, on the one hand, and "practical" issues such as health, housing and education on the other. The alternative position would be to argue that the symbolic and the practical would most effectively be bound together, one driving and justifying the other. Despite the government's emphasis on "practical" policies there was in fact little practical improvement in living conditions, health or education for indigenous Australians during the Howard tenure; indeed against New Zealand and Canada, Australia went backwards on all these measures.

III

Howard, in short, spent the first ten years of his Prime Ministership in a determined effort to move Aboriginal issues from the centre stage of national politics: downplaying Aboriginal exceptionalism, abolishing separate indigenous institutions, and mainstreaming Aboriginal services. Then, in his last year as Prime Minister and a few months out from a general election, he suddenly and dramatically moved Aboriginal issues back to centre stage and to the very top of the agenda. This was with the government's declaration on 21 June 2007 of a "national emergency" in indigenous affairs, especially in relation to domestic violence and child sexual abuse in remote Aboriginal communities in the Northern Territory, and its announcement of an emergency "intervention" in those communities. The declaration was sudden and the measures announced were drastic and far-reaching. The Army and police from around the country would be sent into Aboriginal communities; compulsory health checks of all children would be instituted; townships would be acquired; the permit system, which enabled Aboriginal communities to control entry onto their land, would be abolished; a major community employment scheme would be phased out; welfare money would be quarantined to ensure it was spent on food and children's education; government appointed managers would be placed in communities; and much more. There had been almost no consultation or detailed planning before the announcement. As Melinda Hinkson has remarked, "The sheer scale of the measures … took many by surprise. Taken together they constituted a governmental intervention unmatched by any other policy declaration in Aboriginal affairs in the last forty years".  

Although the government's announcement was sudden, there had been increasing political and media attention to living conditions in remote communities over the previous few years. On one level, then, this was nothing new; government and other inquiries had been reporting on increased levels of alcohol and drug abuse, domestic violence, sexual abuse, and educational and health problems in Aboriginal communities for more than a decade. Indeed, there had been thirteen previous official inquiries into sexual abuse during Howard's term as Prime Minister, including three federal inquiries. 

Periodically the grim results of these inquiries would make an appearance in the media. The rhetoric of "closing the gap" was becoming more and more common — that is, closing the gap between indigenous life expectancy and that of the rest of the population (there is currently a difference of around seventeen years), and closing the gaps generally in the levels of health, housing, income, educational achievement etc. between Indigenous Australians and the general population.

What was new over this same period was the appearance of a campaign from conservative
right-wing intellectuals, think-tanks and media interests focusing on the issue of Aboriginal welfare, remote communities and policy approaches; that is, from groups which had not previously shown much interest in Aboriginal affairs. The Australian newspaper, in particular, played a leading role in highlighting many of the issues, such as the devastating effects of petrol sniffing on Aboriginal communities (one issue where action was taken, with the introduction of modified petrol despite the resistance of the oil companies). The Australian had also invited leading Aboriginal spokesperson Noel Pearson to become one of its regular weekly columnists. Pearson is the most influential Aboriginal spokesperson in Australia at present, and he has long argued the case that existing policies, with many Aboriginal communities reliant on government welfare payments, had created a situation of passive "welfare dependency" which had had destructive effects on families, individuals and community life. He argued for a radical shift in policy approaches, including certain measures that chimed with conservative thinking, such as making welfare payments conditional upon parents' responsible behaviour and integrating the Aboriginal economy more into the mainstream economy. John Howard made it clear that he listened to Noel Pearson, and Pearson's radical plan for reform in his own Cape York (Qld) community had received government support. Over the last five or six years, then, a new context had emerged for action over indigenous issues: an agenda set by the conservative side of Australian politics and public commentary rather than by the left or by the more radical Aboriginal political leaders. I will return to this conservative agenda a little later.

More immediately the Northern Territory intervention was prompted by the publication of a new report into child sexual abuse and domestic violence in remote communities, the Little Children are Sacred report (Ampe Akelyerneman Meke Mekarle), released in June 2007, which had exposed in graphic terms the extent of these problems. The Northern Territory Labor government had accepted the report and promised to act upon its many recommendations, but the Howard government accused it of delay and inaction. Howard indicated that it was the experience of hearing a passionate interview with Noel Pearson on ABC Radio that finally moved him to take drastic action. After declaring the national emergency in June, in August the government pushed the necessary legislation through Parliament in just three days, with the support of the opposition Labor Party. The legislation included specific exemptions from the Racial Discrimination Act 1975 to enable the new measures to be implemented. The position of the Labor Party was that despite reservations about elements of the proposed intervention, the situation was so serious that the legislation had to be supported — or perhaps that it was politically risky to appear to be opposing decisive, bold measures designed to protect vulnerable children. It became clear in subsequent days and weeks that many aspects of the intervention had not been worked out in any detail. Nonetheless, medical teams, police from the states, and army units did begin to move into Aboriginal communities to commence health checks (which became voluntary rather than compulsory after objections to compulsion were raised), to enforce alcohol restrictions, and so forth. Almost $600 million was dedicated to the first twelve months of the intervention (the new Labor government subsequently claimed that no money had been allocated to sustain the program beyond the middle of 2008).41

The Howard government's action put many on the left or in the liberal centre in a difficult position. There was, undoubtedly, an extremely serious situation in many Aboriginal communities involving alcohol, drugs, violence, sexual abuse, health conditions, housing, and education; indeed the situation
appears to have been getting progressively worse over the last decade, despite slight improvements in certain areas, in over all levels of Aboriginal education for example. Policy approaches or policy implementation, perhaps both, had failed in many areas. "Business as usual" appeared not to be an option. Some form of extra-ordinary strategy seemed justified and the intervention meant that finally the federal government was taking large-scale action to address the indigenous disadvantage that many had been pointing to for years. Was it the case that the Howard government was doing the right thing, even if for the wrong reasons?

In addition many Aboriginal leaders, not just national media figures such as Noel Pearson but also those on the ground in local communities, stated their support for the drastic measures that were proposed. They welcomed more police, more control over welfare payments, bans on alcohol and pornography, and more intervention in health and education. Some even recommended that children be removed from Aboriginal communities for their own safety and to enable their education, a challenging suggestion given the political sensitivities surrounding the issue of the Stolen Generations in Australia's recent past. The support of these Aboriginal people, the rhetoric of "crisis", the passionate statements of Pearson and others, the focus on the issue of child sexual abuse, and the sheer fact that large-scale commitments by governments were necessary — all these factors made it difficult to articulate opposition to the intervention, however outrageous and ideologically-motivated the intervention seemed (sending in the army, paternalistically controlling welfare payments, rolling back land tenure etc.) and however suspicious one might have been as to its political objectives.

Some of the immediate responses of critics did not seem to engage fully with the issues that had been identified. Yes, the intervention had all the hallmarks of another John Howard pre-election tactic, a replay of the earlier summoning of "crisis" over illegal immigrants. Yes, the announcement seemed to revive the worst kinds of white paternalism, a solution imposed from outside, by Canberra, that went against all the principles of consultation and self-determination which have been proven to work best in these situations. Yes, once again, Aboriginal people were being portrayed as unable to manage themselves, and Aboriginal ways of life were being discredited as dysfunctional and unsustainable in the modern world. Yes, the Howard government seemed to want to return to the assimilation era. There are elements of truth in all of these criticisms, and yet none of them directly addressed the need for urgent action in the short-term, or the longer term questions about the sustainability of remote communities. The re-establishment of social norms and the rule of law, the rebuilding of regular education for children, the creation of safe environments for children and adults, the economic future of communities — these remained complex issues that challenged any merely rhetorical critique.

It seemed to me at the time, and it still does, that this was an occasion for a certain humility as well as vigilance. I might possess sophisticated tools for analysing the ideological underpinnings of the Howard-Brough rhetoric. I could see the traces in it of both old and new conservative values that I thought were not in Aboriginal peoples' best interests. I was disturbed by what seemed to be the lack of respect and recognition of Aboriginal cultures. I am professionally disposed to be sceptical of such political manoeuvres. But while scepticism and vigilance are certainly necessary, like many, indeed most Australians, I suspect, I could not honestly say that I knew what was needed in remote
Aboriginal communities. I could not comfortably reject the talk of crisis and the need for large-scale intervention and radical policy solutions. There was the risk of a sort of moral complacency in simply dismissing the Howard action as ideologically motivated, racist, and having a hidden agenda, even if these charges were largely accurate.

Once the details of the intervention and the legislation began to emerge, however, some fundamental problems did become clear. Most dramatically, critics pointed out that the government intervention in fact followed none of the recommendations of the Little Children are Sacred report on which it was purportedly based. As one of the authors of the report has written: “it seems to us that the government has missed the central point of our recommendations. The first recommendation … was absolutely clear: no solution should be imposed from above.” Thus while the authors of the report welcomed the fact that serious action was being taken, they were disturbed by the government’s approach.

The lack of consultation and of any detailed plans for giving indigenous people input to new programs was one of the most widely criticised aspects of the government’s intervention. The vast majority of experts and experienced practitioners agree that programs are successful only when indigenous “ownership” of the programs is put in place and where trust is established through community consultations. The consultations did begin, to some extent, after the measures were introduced. Another issue that critics identified was the fact that the move to control welfare payments was applied to all Aboriginal families not just those where problems had been identified, and this has continued to be a point of contention for Aboriginal people.

Perhaps even more far-reaching, a number of the measures introduced by the Howard government seemed to have little relation to the immediate questions of violence and abuse. In particular, the government’s plans for changing the fundamental nature of land ownership in Aboriginal communities appeared to be driven more by an ideological agenda than by the issues of abuse, violence and chronic disadvantage. The key measures were the government’s intention to take control of land currently owned by communal Aboriginal land trusts under five-year lease agreements and to push further to persuade traditional indigenous owners to transfer land to the Commonwealth under 99-year leases, in part to encourage private home ownership. Without attempting to enter into the details of these arrangements, the general direction was to move from what the government saw as collective or communal forms of ownership towards individual, private ownership.

To the land tenure provisions can be added the abolition of the “permit system”, which gives Aboriginal Councils the say over who has the right to enter their communities; and the abolition of the Community Development Employment Project or CDEP scheme, which was designed to enable communities to create employment, in order to give preference to what the government called “real jobs”. This change would most likely require Aboriginal people to move off their communities in search of employment. As with the proposed changes to land tenure, the objective seemed to be open up Aboriginal communities and individuals to the workings of the marketplace.

All these measures seemed to be aimed at breaking down the institutions, legal structures and
cultural practices that recognise and support any separate forms of indigenous governance, land tenure or cultural and economic development. This was explicit in the government use of the language of "normalisation"; it aimed to "normalise" Aboriginal communities, not just by funding adequate policing, health and education facilities, but also by changing the very basis of community structures. As one critic put it: "The NT intervention is aimed at nothing short of the production of a newly oriented, 'normalised' Aboriginal population, one whose concerns with custom, kin and land will give way to the individualistic aspirations of private home ownership, career and self-improvement."[25]

IV

This brings me back to the conservative interest in indigenous affairs which has emerged in a significant way in Australia since the mid-1990s. For this program of "normalisation" is largely its agenda: to discredit any form of separate indigenous cultural or political aspirations and to argue that the only way forward for indigenous peoples is their integration into the mainstream economic, social and legal structures of the nation, as individualised, privatised citizens and consumers. In broad terms, of course, most Aboriginal leaders have also been arguing for the better integration of their people into the Australian economy and polity, but with the key difference that this occurs according to an indigenous agenda, from the basis of institutions and practices developed by indigenous peoples themselves. Noel Pearson himself is very strong on this point: that developing such institutions and practices is crucial to any program of reform. Here he parts company with the Howard agenda in fundamental ways:

The Howard-Brough plan to tackle grog and to provide policing is correct. However, the plan needs to be amended so that there is a concerted strategy to build indigenous social and cultural ownership.

Howard and Brough need to understand the challenge is this: we must restore Aboriginal law in these communities. We must restore Aboriginal values and Aboriginal morality in our communities.

Aboriginal law, properly understood, is not the problem, it is the solution. When I say Aboriginal law, I do not just mean the laws that prevailed in our pre-colonial classical culture, I mean our contemporary values and expectations about behaviour. The old law did not deal with grog, drugs, gambling, money and private property.

These new things have represented a fundamental challenge for Aboriginal culture. Many communities have struggled to apply the values that underpinned their traditional laws to these new challenges.

... Howard and Brough will make a historic mistake if they are contemptuous of the role that a proper and modern articulation of Aboriginal law must play in the social reconstruction of indigenous societies.[19]

These arguments from Pearson are not the ones taken up with great enthusiasm by conservative, non-indigenous commentators. But in many ways the conservative campaign is not really about Aborigines at all. Instead it is part of a longer term intellectual and ideological struggle to rewrite the history of reform in Aboriginal affairs since the 1960s (and indeed in just about every other domain of
public and private life). Its real targets are not dysfunction or disadvantage in Aboriginal communities, but the left-liberal and reforming intellectuals, and the politicians, judges and bureaucrats, who helped define and institute the move away from the assimilationist agenda of the 1940s and 1950s to the agenda of civic and indigenous rights and indigenous self-determination introduced gradually from the 1970s. More precisely, it is about claiming intellectual authority and political power in the present, through discrediting their opponents' past record by claiming that its results have been disastrous and that the left is either hopelessly caught in nostalgic fantasies about indigenous peoples or dangerously committed to libertarian plans for "social engineering" (or both at once). Moreover, this campaign has been quite successful, with much of the reforming agenda in education and social policy, and even major policy frameworks such as multiculturalism, being discredited in the public sphere and wound back by government.

One of the particular bugbears of the new right is the recognition of customary law — that is, the practice whereby judges and magistrates in certain instances can take into account traditional Aboriginal practices when deciding cases and sentencing. While there have been a few headline cases where, perhaps, questionable judgements have been made (as there are in all judicial areas), the system has been operating effectively for a number of years, in the belief that finding culturally appropriate sentences for Aboriginal offenders will have a better chance of success (where standard procedures had notably not been very successful). The recognition of customary law is often portrayed by conservative commentators as letting child abusers, rapists and violent offenders go free if they are indigenous; it is presented as if there is a "riot" of customary law taking over from the normal application of Australia law (instead of modifications in sentencing in some cases). Thus the legislation introduced into Parliament to enable the NT intervention also contained measures to direct courts not to take customary law into account in sentencing. Again, the problem had more to do with ideological objections to cultural separateness than to any breakdown in the system.

The conservative commentators have an interest in establishing that Aboriginal communities on Aboriginal-owned land are currently dysfunctional and ultimately unviable; and that they are so, not just because of poor implementation of policy, but in their very essence, because of their dual rejection of markets and modernity. Of course, the reality is much more complex, with Aboriginal communities seeking various forms of "two-ways culture", adapting to the pressures and opportunities of both markets and modernity but attempting to retain aspects of Aboriginal culture and self-governance in the process. Even here, though, Aboriginal policy is not the prime concern, only perhaps the most striking example. The ultimate target is to discredit the whole left-liberal agenda and its progressive version of social reform: from the welfare state to feminism, affirmative action, environmentalism and so on.

At the heart of the conservative attack is what they call the "rights agenda", in particular the idea that minority groups might be accorded specific rights on the basis of a group identity. Thus the sustained attack on "symbolism" (on rights and reconciliation), because the conservative commentators and politicians know that such symbols not only acknowledge cultural distinctiveness and separate rights they justify action on this basis. Symbolism is dismissed precisely because it is not merely symbolism. Thus the Australian could write in an editorial following the government's announcement:
With hindsight we can see that the rights-based, self-determination agenda that has driven indigenous policy since the 1960s was bound to fail. It was a tangle of ideological contradictions, symbolism and tokenism resulting in separateness or apartheid in the strictest sense of the Afrikaans word. The well-intentioned social engineers driving the policy were informed by left-Libertarian thinking that held that indigenous peoples should be free to live their lives as hunter-gatherers, theoretically uncluttered by modern society but able to tap into the resources of the welfare state. In fact, the two are totally incompatible.\textsuperscript{50}

Here, in an extraordinary rewriting of history, self-determination and granting ownership of land to traditional owners become apartheid. The aspirations of Aboriginal people to reclaim and return to their traditional lands are seen as nothing more than the romantic dreams of libertarian social engineers. Rights for indigenous people are seen as getting in the way of their full integration into “normal” Australian society. There’s a kind of “tough guy” or “tough love” attitude here that says: “Look, sorry, but we might just have to override your rights in order to make things better for you.” Rights are thus made to look not fundamental but merely symbolic or decorative, inessential to a “real world” view.

There is no suggestion in arguments like those quoted above that the current situation might be due, at least in part, to three or four decades of poorly managed infrastructure from all levels of government, health and education provision at much lower levels than for other Australians, inadequate policing, chronic underfunding and understaffing of services, the legacy of previous policies such as child removal, and, until recently, the general “disvaluing” of Aboriginal cultures in Australian society and of Aboriginal affairs as a policy issue.

The hysterical tone of the \textit{Australian} editorial indicates that it is a gross misrepresentation both of the analysis produced and the practical measures put in place by the policy-makers in the post-assimilation period. H. C. Coombs, one of the key figures in this transition and a key target of the conservatives, produced a report on Aboriginal communities in 1974, written with leading anthropologist W. H. Stanner. They made many of the same points that are being made today. There were problems with housing, living conditions, alcohol and a lack of “civic pride.”\textsuperscript{59} They recommended, not hunter-gather lifestyles, but paid employment, community services, and better training. For Coombs and Stanner advocating support for Aboriginal peoples’ aspirations to return to their traditional lands was \textit{not} in contradiction to promoting new economic options to make communities viable and improve individual opportunity.

The difficulty, for sympathetic commentators, is to find a way to describe the current situation which can fully acknowledge where and how the living conditions in Aboriginal communities are bad — destructive to individuals and families, dangerous for children, and detrimental to education, training, or even good health — but to do so without buying into the larger, ideologically driven arguments which are largely about political and philosophical differences among \textit{non}-indigenous activists (much of the neo-conservative agenda is driven by intellectual influences from the American new right).\textsuperscript{56} At the same time, coming to terms with the nature of indigenous disadvantage might
very well require some significant adjustments in the positions taken on the liberal left in considering, say, the relationship between remote communities and the marketplace — thinking for example of the role of private investment on Aboriginal lands. Indeed one of the recommendations emerging from the 2020 Summit was the idea of tax breaks for investment in indigenous enterprises.

Despite what some see as the assimilationist or paternalist thinking behind the Howard plan, other analysts have argued that it is simply not possible to return to the policies of the assimilation era. Any government must now deal with “the massive bureaucratic web of indigenous organisations covering Australia, estimated to number in excess of 6000, all premised on the rhetoric of self-determination.”\textsuperscript{37} The needs and demands of Aboriginal people themselves bear little resemblance to those of the assimilationist era, nor does the indigenous population, now twice as large and much younger than it was in the mid-1960s.

V

Let me turn now to the response of the Rudd government since its election. Most strikingly, the Rudd government moved in a decisive way to reunite the “symbolic” and “practical” dimensions of indigenous policy by reversing John Howard’s position on the Apology; that is, a formal apology by the Prime Minister, on behalf of the Australian Government, to those individuals and indigenous families affected by past policies of child removal. Kevin Rudd’s apology was the primary business at the opening of the first Parliament in 2008, and from all the evidence I have seen, from media articles and video footage, as well as messages from friends and colleagues in Australia, the occasion seems to have had a very strong emotional resonance for large sections of the Australian community. The importance of the occasion — and the force of Rudd’s speech — was not simply the fact of the Apology itself but what it signalled about a new respect and recognition of indigenous cultures within the national polity. The Apology was explicitly connected to the government’s commitment to closing the gap in indigenous life expectancy, health, and literacy and numeracy.

Less well known but also significant is the new government’s reversal of the Howard government’s refusal to support the UN’s Declaration on the Rights of Indigenous Peoples. Australia was one of four countries that refused to endorse the declaration in September 2007, along with New Zealand, the USA and Canada (which reversed its twenty year support for the Declaration after a great deal of lobbying by John Howard). Japan did endorse the declaration but it has yet to formally recognise the Ainu people as indigenous peoples. However this recognition has subsequently been recommended to the government, with a resolution to that effect having been adopted by the two chambers of the Diet in June of this year.\textsuperscript{38}

At the heart of the Howard government’s unease with the Declaration — which had been supported by previous Labor governments — was precisely the inclusion of the principle of self-determination. Even though the Australian delegation had earlier played an important role in insisting that self-determination was not a challenge to the integrity of a state’s territorial boundaries, the Howard government raised the spectre of secessionist movements or a separate indigenous state. The UN Declaration also recognises the collective rights of indigenous peoples, again a proposition
fundamentally at odds with the Howard government’s general suspicion towards the so-called “rights agenda”. Soon after its election the Rudd government announced that it would endorse the Declaration. As with its decision to sign the Kyoto Protocol, this was partly about restoring Australia’s commitment to international and multilateral agreements which had been substantially weakened under the previous government (and one of the prime reasons was criticism by the UN of Australia’s treatment of its indigenous people).94

Having supported the NT intervention while in opposition, the Rudd government was not suddenly going to halt the various programs that had been initiated. Labor has, to date, retained most of the key “on the ground” elements such as increased policing and alcohol and pornography bans. In what was probably both wise politics and good policy-making, the government committed to a twelve-month review of the intervention, and despite being pressured to take more drastic action (either by extending it or winding it back) the Prime Minister reiterated this position on a number of occasions and a review is under way at the time of writing (see below). At the same time Rudd has left the door open to extending the intervention beyond the Northern Territory if the review suggests this as an option. That, of course, would require the co-operation of the states, and the Prime Minister has signalled that indigenous affairs should be a major issue for the Council of Australian Governments (COAG, comprising the Prime Minister, State Premiers, and Territory Chief Ministers).95 He has also committed to meetings with Aboriginal leaders in the Northern Territory every three months, following an initial meeting in December 2007.

The Labor government has, nonetheless, announced some important changes to the Howard measures. First, Labor has promised to retain the permits system, which is seen to allow Aboriginal communities some measure of control over who enters their communities (this is still deeply worrying to conservative commentators who believe it amounts to separatism and shuts off Aboriginal communities from public view; however the government has said that journalists will have access to communities). Second, Labor has promised to reinstate the CDEP work scheme with modifications. The scheme has been controversial, with some claiming that it represents a way out of passive welfare, others claiming it entrenches a form of welfare dependency. The government’s reforms might well be more radical than the initial announcement of “modifications” suggested.96 Certain well-informed commentators argue that CDEP has been a successful scheme for creating community-managed employment. Tim Rowse argues that its programs established precisely the kind of “indigenous political institutions that are needed to partner government intervention”.97 The scheme, incidentally, was established by the conservative Fraser Government in 1977.

In March of this year, through Health Minister Nicola Roxon, the Rudd government also pledged that Indigenous Australians will be guaranteed the same access to primary health care facilities as other Australians by 2018. The strategy aims to give Aborigines the same life expectancy and health status as non-indigenous people by 2030. Interestingly, rather than simply announcing this strategy, the Minister signed the pledge together with a number of Aboriginal health bodies representing doctors, nurses, dentists and health organisations. And in a further contrast to the previous government’s approach, the strategy gives Aboriginal-controlled health providers a central role in the design, delivery and control of the services.98
In a parallel move, not directly related to the NT intervention but undoubtedly signalling a new policy approach, Indigenous Affairs Minister Jenny Macklin, announced in January that the government had scrapped the National Indigenous Council, the appointed body set in place by the Howard government after it had abolished the elected Aboriginal and Torres Strait Islander Commission (ATSIC) in 2004. What is not yet clear is what kind of representative body will replace the Council, or when, but Labor policy is to reinstate an elected body.

From this summary I think we can predict that there will be no radical departure from the measures introduced by the Howard government in so far as they deal with the issues of health, safety, law, and welfare. But it appears that there will be an increase in managing programs through a consultative and co-operative approach and through negotiating ownership and management of new programs with Aboriginal organisations. Further some of the aspects of the Howard plan that seemed most overtly driven by ideological rather than practical needs, such as the abolition of the permits system, have been reversed or modified (or will be after the review).

There have been increasing criticisms of the intervention, although many of its local measures do seem to have been accepted by Aboriginal communities. Some Aboriginal people have demonstrated against the quarantining of 50 percent of Aboriginal parents’ welfare payments, arguing that this creates difficulties in managing family incomes and destroys self-esteem. In mid-April, a delegation of forty Indigenous Australians travelled to the UN in New York to voice their concerns about the Northern Territory intervention which they argued breached a number of UN Charters. A recent survey of six NT communities conducted between February and June 2008 found that slightly more than half those surveyed were in favour of welfare quarantining (51 per cent for, 46 per cent opposed), a strong majority of 76 per cent expressed support for the CDEP program, and an even stronger majority, 94 per cent, were opposed to the permit system being altered. Almost all of those surveyed also criticised the way the intervention had been rolled out in its first year, stating they’d been given little information about it.

However, despite the criticisms, at the time of writing there had been no announcements from the Rudd government about changing the welfare regime; although increased flexibility has been introduced into the land leasing scheme with the hope of increasing the take-up rate for long-term leasing, thus enabling the government to commit over the longer term to better housing and infrastructure. Certain of the more radical aspects of the original plan thus remain on the agenda; again, some Aboriginal leaders have welcomed the leasing plan as they see it as a way of locking-in the government to working with their communities. These measures will be reviewed along with the other aspects of the intervention at the end of the twelve-month period signalled by Kevin Rudd. In early June the government announced a 14-member review panel headed by WA Indigenous leader Peter Yu, but it is not expected to report until the end of September.

Finally, the 2020 Summit confirmed what has been emerging over recent years, that there are now some major divisions among Aboriginal intellectuals, political leaders and spokespersons concerning priorities for indigenous policy. In the broadest terms, there appears to have been a split
between those who emphasised issues associated with indigenous rights, such as a treaty or the re-establishment of an elected indigenous representative body such as ATSIC, and those who preferred to emphasise the practical questions of child welfare, education, health and so forth. Professor Marcia Langton, from the University of Melbourne, criticised the Indigenous section of the Summit for focusing too much on the former at the expense of the latter. Others at the Summit denied that this had occurred, and insisted once again that “rights” and practical measures were intimately linked.38

Interestingly, a middle ground seems to be emerging around the issue of constitutional reform — that is, changing Australia’s constitution so that it gives full recognition to Aboriginal and Torres Strait Islander people as Australia’s Indigenous peoples and as the original owners of the land. This is being portrayed as a “mainstream” approach in opposition to the calls for a treaty. Galarray Yunupingu has linked this reform to Australia becoming a republic, arguing that because of the British colonial past constitutional recognition would be meaningless without a republic, and he wants the government to enshrine Aboriginal land and sea rights in the constitution.39 Then Opposition leader Brendan Nelson has also supported the move towards constitutional recognition and agreed to work with the government on taking it forward. On the other hand, Opposition Indigenous Affairs spokesperson Tony Abbott insisted that “the intervention was to re-establish Australian cultural norms, not remote Aboriginal ones” and that “Aboriginal culture is inconsistent with success in a modern economy.”39

Noel Pearson also supports constitutional recognition, arguing that some form of agreement or settlement between Indigenous Australians and the rest of the nation is still necessary, and that it is not contrary to practical reforms or to Australian citizenship. It is appropriate that I leave him the last words:

[In the immediate-term indigenous people need to work towards convincing] “the millions of John Howards in this country” to positively vote for constitutional reform at a referendum. “You [must] explain to them that no, we are not proposing this as an agreement between two sovereign nations, we are proposing this as an agreement between an indigenous people of the nation and the rest of the country. Then possibly you might have less opposition and alarm to the concept.”

“We have to recognise indigenous people as a distinct people but at the same time we can’t fracture the universal national citizenship. [Kevin] Rudd, the parliament, and the nation at large are not talking about a two-tiered citizenship.”

[He said] Aborigines must find a way of explaining to the wider populous that the recognition of a distinct cultural identity, including retaining indigenous languages and protecting Aboriginal heritage, was not inconsistent with Australian citizenship.38

(Endnotes)
(1) <www.abs.gov.au>
(2) The Government invited 1000 Australians to Canberra for the Summit, held on 19-20 April in Canberra. See <www.australia2020.gov.au>
(7) Phillip Coorey, Peter Hatcher and Stephanie Peatling, “Just Imagine if it was Marrickville,” Sydney Morning Herald 23 June 2007, p. 25.
(9) Larissa Behrendt, “The Emergency We Had to Have,” in Coercive Reconciliation, p. 15.
(20) See the Communiqué on indigenous affairs at <http://www.coag.gov.au>
(26) Patricia Karvelas, “More Aborigines Back Welfare,” Australian 15 August 2008. The heading could be seen as biased given the other results in the survey.
(27) The report on the intervention was delivered to the Rudd government in late September 2008, but the draft was significantly rewritten before the public release in October. Support for the CDEP scheme, for example, was watered down and support for the continuation of the intervention was boosted in the final report. Nonetheless the report recommended abolition of the income management scheme. The government announced it would not act on this recommendation and, indeed, would continue the intervention basically unchanged for another year. See Paul Toohey, ‘Macklin Moves to Put Reform Before Politics’, Australian, 24 October 2008; and ‘Rewrite Takes the Sting Out of NT Report’, Australian, 15 October 2008.
(28) The Australian newspaper has continued its close reporting of these debates. Its own agenda means that a level of scepticism is needed about its reporting: while differences of opinion and strategy are real, the newspaper is also setting the agenda in this area, interviewing spokespersons opposed, say, to the treaty idea, and then running a news item based on the comments made. Its “news” is often invisible in other media.