Chapter Four

Romantic Solutions to Practical Problems

Professor Austin Gough

The indigenous affairs policies being pursued in North America and Australia represent attempts to interrupt the endless flow and displacement of human populations in history, by legislating to introduce fixed immovable points; it is almost like trying to stop the rotation of the earth. Anticolonial theorists give the impression that they would like to see all races retreat to the boundaries they occupied at the beginning of the 15th Century, or possibly in 6000 BC, with compensation being paid all round.

Present generations would gladly offer compensation to Sitting Bull, Chief Joseph of the Nez Perce, and the Australian Aborigines of the earliest culture contacts for the injustices and broken promises inflicted on them; but we have to deal with the more complicated problem of open-ended rights to compensation inherited by descendants, a problem that calls for reason as well as sympathy. The question of what might be owed to the descendants of the people who occupied North America and Australia when Europeans first arrived (and who were themselves not necessarily the first inhabitants) is being decided, unfortunately, in circumstances not the least conducive to rational debate.

In the first place, without any debate at all we find ourselves locked into a counter-historical rule that prior occupation of territory confers permanent inalienable title and control, a perpetual cause that keeps land forever in the possession of designated clans. It is a curiously aristocratic principle to be endorsed so enthusiastically by the New Left. Applied, say, to Scotland it would mean that land once trodden by the highland chieftains would have to remain always in the possession of their descendants, who would have a perpetual right to negotiate on the use of moorlands, fisheries, towns, mines, and any other land uses not yet envisaged.

Secondly, decisions are being made against a background of late 20th Century romanticism, which has taken the form of a loss of confidence in Western civilisation and a need to express guilt and self-abasement before non-Western societies. In their despair over what they see as the greedy materialism of their own societies, salaried Western intellectuals like to cherish the belief that pure and uncorrupted spirituality exists somewhere in the world.

With the decline of conventional religious belief in the late 20th Century, people were glad to be rid of the concept of Hell, but have been reluctant to abandon Heaven, a place of serenity and ultimate wisdom originally inhabited by angels. This deep spiritual yearning has been satisfied by romantic anthropology, which has created a popular vision of the Edenic state of indigenous societies in the Americas and Australasia as they were before the arrival of Europeans.

In the past decade the most surprising people have been expressing admiration for the strength and purity of traditional cultures and ancient superstitions. Lawyers and social scientists who, as students in the 1960s and '70s, expended a lot of energy in defying their own elders, and who have since maintained their rage against all survivals of tradition in their own society, easily become intoxicated by secrets, myths and "the wisdom of the elders". The more determined admirers are not disturbed by the dysfunctional side of traditional cultures: they prefer to see the obscurantism, the lack of personal freedom and initiative, the treatment of young women and the

incessant clan warfare as subtle and mysterious phenomena, in touch with the rhythms of the earth and reflecting values long since lost by our own shallow civilisation.

In the widely accepted Manichean vision of Pacific and Australasian history, the Europeans with their crude, ignorant, materialist, exploitative, philistine culture -- a "brutal, troubled culture" in Noel Pearson's phrase; according to an article in the *Encyclopaedia of Aboriginal Australia* we are "the European boat people" with our "ersatz cultural stew" -- this coarse unsavoury lot blundered into the region at the end of the 18th Century, trampling underfoot the gentle, delicate, complex, culturally rich and sophisticated societies of the indigenous populations.

This powerful fable has a firm grip on the Australian media: some journalists seem not to understand, for example, that *all* existing cultures are, after all, 50,000 years old. (You don't have to be a purblind Eurocentrist to find something fishy in Phillip Adams' recent remark that "the didgeridoo has as important a place in music as J.S.Bach".)

It has become a commonplace that the historical clash on this continent between two cultures at very different stages of development must be seen essentially as a great racial injustice, and that reparation has to be made on the inherited basis of race. The idea is made more potent by the fashionable doctrine that all understanding and all attitudes are products of one's race, gender and class, with race being by far the main determinant.

It doesn't seem so long ago that liberal idealists looked forward to a gradual blurring of racial distinctions, and spoke of integration and intermarriage as unambiguously good things. The cover picture on a famous issue of *Time* magazine only twenty years ago was a composite photo showing the racially blended "American of the future".

This liberal current has been reversed: the orthodox view now is that every ethnic group (other than Caucasian) has an absolute right to preserve its own racial identity and its sense of Pan-Africanism, negritude, or aboriginality. We have come a long way since Martin Luther King expressed the hope that his children would be judged not by the colour of their skin, but by the content of their character; today skin colour is all-important.

At the end of a century filled with the harsh lessons of racial conflict, and at a time when genetic research and DNA technology are making it clear that there are profound similarities between races rather than profound differences, it seems extraordinary that a liberal multi-ethnic society such as Australia is still making laws distinguishing one race from the rest, and discussing amendments to the Constitution to make this racial distinction permanent.

It isn't altogether a cliché to say that indigenous policies have reached a fork in the road. Indigenous people from the Inuit to the Warlpiri have shown, in negotiations with governments and with mining, logging and pastoral companies, that what they want for the next generation are the benefits of modern education, housing, medical and municipal services, access to jobs, investment capital and scope for individual initiative, and legal protection for women and families. There is very wide recognition that these are benefits created by Western civilisation; traditional societies never provided them in the past and will not do so in the future. Pragmatic negotiators recognise also that taking full advantage of the tangible benefits entails accepting the responsibilities of citizenship in a modern state, and that this can be done without indigenous people having to turn their backs altogether on their spiritual traditions.

At the same time, however, the lawyers, academics and bureaucrats who are too easily accepted by governments as leaders and representatives of Aboriginal opinion are rejecting the concept of integration, and heading defiantly in the opposite direction towards a separatist mirage which will do no more for Aboriginal people than Islamic separatism is doing for the people of Iran and Algeria.

The Keating-Tickner period in Aboriginal affairs created a team of media-wise zealots whose careers depend on continually emphasising racial and cultural differences. They have been encouraged to mount a campaign of truculent metapolitics, stressing the gulf between "we" and "you people" -- "If Australians don't get it right by 2000, we'll give you a lot of trouble" -- and firing off volleys of contemptuous and defamatory rhetoric about whitefellas, lynch mobs, white supremacists and genocide. The high profile militants and their supporters in the legal profession, the media and the universities seem determined to ensure that our most obvious racial conflict will last for ever: if Australia is carrying a burden of unutterable shame, an Original Sin which can never be expiated, the penance for it must take on the quality of eternal punishment.

Nobody stops to ask how it can be in the interests of Aboriginal people to be set permanently apart, as a refractory and unassimilated element at arm's length from Australian society, or to ask how an essentially separatist Aboriginal policy can survive in the multi-ethnic Australia of the 21st Century.

A multi-ethnic democracy will find it hard to accommodate separate legal, financial, administrative and cultural arrangements for one particular minority, based not on need but frankly on race; it is hard to imagine that in thirty years' time there will be much patience with the bizarre racial arithmetic which dictates that a man who is one-eighth Aboriginal and seven-eighths Irish is not an Irish-Australian but an Aborigine, with an identifiable set of qualities and special rights. (A racial test is equally repugnant whether it is applied to impose a penalty or to confer a benefit.) There will be well-justified resentment if the preamble to a revised Constitution mentions Aborigines in language which the High Court might take as an invitation to interpret legislation against the interests of non-Aboriginal Australians.

Apart from the counter-productive policies being pursued in the area of native title, there are two very striking examples of the apparent wish of the current generation of "representatives" to lead Aboriginal people in the directions which will cause profound regret in the future.

Like Islamic fundamentalists, many indigenous activists feel that they can best defend their traditional cultures by denigrating Western culture and Western science. In their suspicion of the prevailing "colonialist" culture in Australia they have welcomed the intellectual doctrine, slightly out-of-date but still influential in universities, that there is no such thing as objective knowledge, only different knowledges; and, of these, both women's knowledge and indigenous knowledge are superior in every way to the crass scientific thinking of the West with its naive faith in empirical data and linear reasoning. The political value of this supposed clash of irreconcilable cultures was obvious in the Hindmarsh Island affair, but anti-scientific mysticism of this kind has been especially devastating to archaeology, a field in which until a few years ago Australia was producing results of world-wide importance.

Archaeology is a benign science which has been of profound benefit to indigenous groups in many parts of the world by revealing the long perspectives of their pre-history. In Australia the scientific archaeology begun by John Mulvaney in the 1950s has given Aborigines the knowledge of 40,000 years of human occupation, a priceless political symbol, and uncovered scores of important sites, hardly a single one of which was previously known to modern Aborigines, much less venerated.

Archaeology is a natural field for cooperation between races, and for many years Australian archaeologists did enjoy very good relations with Aboriginal communities. But we are now repeating the dismal experience of archaeology and palaeontology in North America: activists are asserting their ownership and control over all evidence of human habitation, however ancient, on the grounds that they are the traditional custodians -- a view endorsed with uncritical

enthusiasm by the ABC. Given the vast changes in climate and geography over tens of thousands of years, and the endless movement and replacement of populations, their claims of direct descent from people who inhabited their localities 25,000 years earlier are almost astronomically improbable.

Ill-informed and ideologically confused governments have cooperated by passing a series of *Heritage Acts* conceding, in practice, that the self-appointed spokesmen for the present generation of Aborigines are the legal owners of remains five times older than the Pyramids, and that all ancient remains must be classified as Aboriginal remains and made subject to the religious beliefs of modern Aborigines. The result has been that some of the most important research collections in the country have been handed over, with government approval, to Aboriginal collectives, quite often to be destroyed or reburied in order to prevent further research.

When the archaeologists have argued that very ancient material is part of the general history of humanity, of equal interest to all races, and that preserving excavated remains will allow them to be examined with techniques still being developed, they have been told by prominent Aborigines that they are "mad scientists" and "white supremacists practising cultural genocide". Not one of the well-known tertiary-educated Aborigines in public life or the universities has said a word in defence of archaeology, or expressed even the slightest reservation over the melancholy fate of the Kow Swamp collection or the La Trobe University research project. In such cases reconciliation means that the representatives of science retreat in disarray, abandoned by governments, the courts, and the media.

Behind the claims of ownership over all ancient remains there is a broader theme of the ethnic control of research. Nationalists have always believed that only an Italian can understand the Italians, only an Englishman can write English history, only a Russian can understand the Russian Revolution. (The more sophisticated version is that only a non-Italian can understand the Italians.) But to give this belief the force of law is a totalitarian gesture.

German theorists in the 1930s declared that "only the Folk can study the Folk", and more recently some Third World governments have expelled European anthropologists on the same principle. Indigenous movements are now extending the principle to archaeology, and are arguing that ancient remains can be studied only by the indigenous people who happen to live today in the same region: applied to the 5000-year-old body of a man found in the Austrian Alps a few years ago, this would mean that the remains could be studied only by Austrians -- or destroyed by Austrians.

There have been suggestions that all excavations and palaeontological research should be left for Aboriginal scientists of the future; but the zealots find even this undesirable, because archaeology produces unpredictable results. The evidence for successive migrations into the continent, and the rapid progress in techniques for extracting and analysing fossilised DNA, are in potential conflict with claims of continuous occupation of territory by particular groups, and with the belief expressed by some Koori authorities that Aborigines originated in Australia and are *sui generis*.

Some have doubted the desirability of Aborigines studying white sciences at all: this is essentially the position taken by Black Studies courses in American universities, and I have heard the argument used to justify the channelling of Aboriginal students into supposedly "appropriate" university subjects. The same argument is used by Islamic authorities about the necessity for purely Koranic education: it is a prescription for condemning Aborigines, in Peter Howson's phrase, to "imprisonment within an anthropological museum".

The other conspicuously wrong turning has been the revival, with the approach of a new millennium, of the Keating-period rhetoric about self-determination being only a step towards the higher goal of separate Aboriginal sovereignty -- indigenous people "never ceded sovereignty to the invaders"; Australia must "restore an Aboriginal polity and land base".

Sovereignty on a designated territory is an unlikely outcome in Australia, given the intensely local and territorial nature of Aboriginal societies, but sovereignty in the form of a state within a state, implying dual citizenship and some legal immunities, is being put forward so eloquently by Henry Reynolds, Frank Brennan and others that sections of the media are beginning to believe in it. A reporter on *The Australian* wrote recently that on questions like euthanasia some tribes already can deal with an Australian government "as one sovereign nation to another".

It would be easy to dismiss talk about sovereignty as no more than a negotiating tactic, but we are likely to hear a lot more about it in the next few years because of developments in North America. In October-November, 1996 a United Nations working group debated a *Draft Declaration of Indigenous Rights* which represents the high point of the separatist case, going beyond self-determination to develop, in effect, a doctrine of indigenous supremacy.

Politicians with heart conditions should perhaps not read this document; it should carry a health warning. Any sovereign people receiving it from another sovereign people could be excused if they mistook it for a declaration of war. The terms of the Declaration are harsher than the reparations modern states have imposed on their defeated enemies; it resembles a triumphal proclamation by one of the ancient kings of Assyria.

The message embodied in its forty-five articles is that indigenous people have an absolute right to set up their own chosen form of government on territory equal in size and quality to the territory their ancestors lost, with all costs to be paid in perpetuity by the state.

On the one hand they can decide how far, if at all, they will be subject to the state's laws and institutions, and on the other hand they can exercise a decisive influence in the political life of the state, with a virtual right of veto over major decisions. (The Declaration seems to envisage guaranteed racial seats in Parliament, as advocated in Australia since 1993.) The state must agree not to pass any law that indigenous people find undesirable, and must give full legal protection and financial backing to indigenous cultural activities. Mick Dodson, who was present at the session when it was debated, was reported as saying that the Declaration is only a beginning, a minimum standard from which greater claims will flow in the future.

There is an even clearer lesson for Australia in the 1996 Report of the Canadian Royal Commission on Aboriginal Peoples, which amounts to a blueprint of what the UN *Draft Declaration* might mean in practice.

Canada has roughly 700,000 people of various degrees of descent from indigenous Iroquois, Cree, Kwakiutl, Inuit and other tribes -- 2.5 per cent of the population -- as well as 130,000 Métis who are of mixed Indian and French descent. Expenditure on Indian affairs is $11.6 billion a year: on an individual basis, this is 57 per cent more than the government spends per head on other Canadians, although the figure is inflated by the cost of providing services to remote areas. People of indigenous descent also enjoy a number of tax exemptions.

As one of the consequences of the so-called Charlottetown Accord, a proposal was drawn up to give Indians a high degree of constitutional independence and to increase expenditure on Indian affairs. It was put to a referendum in a year of economic recession and failed in every Province. The Royal Commission in 1996 urges the Canadian government to try again, this time by proclamation without a referendum.

The Report is a monument to political romanticism. Almost every page makes a point of the moral and functional superiority of Indian cultures; the Commissioners seem reluctant to allow Western liberal values, or white people in general, even an oblique hint of credit for anything. There is no analysis or questioning of the guiding principle that, because their ancestors or part-ancestors occupied the land in the 18th Century, the present generation of Indians own the whole of Canada: the Indian affairs budget is taken to be their rent.

Instead of proposing a more secure and fruitful integration of Indians into Canadian society, the Commission recommends that they secede, for all practical purposes, into as many as sixty tribal "nations" on traditional territories, each with its own political and legal system and its own autonomous social policy. Indians living in cities (over half of the total) could be expected to owe allegiance to their respective tribal governments, and would be partly or wholly exempt from Canadian laws. The Commission describes this as a Third Order of Government, alongside the federal and Provincial (State) governments, in which each Indian nation would control the full panorama of government functions and expenditure, with overall control by an indigenous Parliament, the House of First Peoples.

This proposed balkanisation of Canada is envisaged as being permanent. There would be no trial period or sunset clause. For the next twenty years, the Commission says, there would have to be an increase of between $1.5 and $2 billion a year in the already large budget to meet the land claims and setting-up costs of the new nations, but after twenty years they could be expected to be self-supporting and would require no further Canadian subsidies.

Not surprisingly, the Report has been greeted with scepticism. Who will run these new states? Where will the administrators and technicians be found? The main revenues in the long term are supposed to come from land, especially from timber and mining enterprises, but in 1996 there were only five qualified foresters and ten geologists of Indian race; and Indian militants, like the more doctrinaire zealots in Australia, are in favour of separate and "appropriate" education with an emphasis on indigenous knowledge and the use of native languages.

There is broad public sympathy in Canada, as there is in Australia, for attempts to resolve the practical problems of indigenous society, which are similar to those afflicting Australian Aboriginal communities. However, there is not much doubt also that independent self-government in separate nations would make the problems worse, and infinitely harder for any Canadian government to tackle.

In a rare moment of realism, the Royal Commissioners themselves admitted that the poverty and second-class citizenship of indigenous people in the past has been the result of their isolation from the Canadian mainstream. The extreme ethnic militarism which dictates that the Indian population should fragment into as many as sixty "nations" would mean in practice that too few of them could provide a viable range of modern services or a satisfying variety of employment. Instead of doing anything towards bringing indigenous people up to the economic and social level of other Canadians, separation would almost certainly put them further behind. Ancestral land held communally will do nothing for individual enterprise.

These problems are exacerbated by the policy of First Nation activists which states that all Indian education in future has to be racially "appropriate", stressing the revival of Indian languages and, as far as possible, replacing white models of knowledge with indigenous knowledge -- a view uncritically admired by the Royal Commission.

It is worth mentioning some of the other fundamental questions that have been raised in the Canadian press, because they have some relevance to the current situation in Australia. The main national newspaper, the Toronto *Globe and Mail*, for example, has made the point that, although

Canada is still constitutionally bound by treaties which have existed since the 18th and 19th Centuries, it is not a good idea to delegate legislative or police powers to groups defined by race, especially when the group itself can decide who is eligible for membership.

It has been noted that the Royal Commission is asking taxpayers to support Indian "nations" which would be, in effect, foreign countries without real obligations to Canada or to Canadian public opinion. The Commission defines "nations" as "political and cultural groups with values and lifeways distinct from those of other Canadians". That is precisely the point, say the critics: independent Indian nations would not necessarily be democratic or committed to liberal social values.

After hearing submissions from the First Nation leaders, the Royal Commission recommended that the new Indian nations could exempt themselves from some of the provisions of the Canadian *Charter of Rights and Freedoms*, which guarantees the rights of the individual, rights of dissent, and the equality of women. Indigenous groups have expressed some concern that they might have to leave the protection of liberal Canadian society and place themselves under the rule of traditionalist Indian zealots.

The Canadian Prime Minister, Jean Chrétien, had himself served as Minister for Indian Affairs for several years: he is a well known patron of Indian art, and has an adopted son of Indian blood. The Minister, Ron Irwin, was a lawyer for indigenous land claimants, and had made himself popular with grass-root Indian activists by taking money from the Department of Indian Affairs and distributing it directly to local bands or communities, in effect by-passing the Indian native leadership: several of these bands had elected Mr. Irwin as an honorary chief.

Irwin retired from politics at the election this year, which the Government won, but the new Minister, Hon. Jane Stewart, is forging ahead with the already established policy of gradually winding down the Department of Indian Affairs and negotiating directly with individual nations or bands to establish Financial Transfer Agreements (FTAs). The Indian government concerned receives guaranteed funds for a fixed time, and agrees to take responsibility for a range of functions and powers rather broader than the usual powers of municipal government; within negotiated guidelines it can exercise its own discretion on how the money is to be spent.

A good example of this practice is the five-year FTA signed in August this year with the Big Island nation of Ontario: according to the Government's press release, the funding is to be used for "elementary and secondary education, operation and maintenance of roads, sewers and water, sanitation, social assistance, housing, economic development and First Nation governance". (This last category includes day-to-day policing.) An outside observer might have reservations about including education in the powers delegated under FTAs, because of the distinct possibility that some of the race-obsessed rhetoric of First Nation activists will find its way into the school curriculums. In other respects, however, the FTAs appear to provide good opportunities for Indian groups to generate their own sources of revenues in the future.

FTAs are being negotiated against a background of several problems. In many communities there is resentment, sometimes verging on mutiny, against the leaders of the Indian nations for spending too much time on First Nation politics and allowing their local affairs to be mismanaged.

At the Stony Reserve in Alberta, for example, which has 3,300 residents, the hereditary chief John Snow has been in office for 30 years and has a high profile on the national scene. The reserve has earned several hundred million dollars in the past few years from oil and gas reserves, and received $20 million a year from the Government: yet in the financial year 1996-97 it managed to accrue a deficit of $5 million, and 60 per cent of the adults are on welfare, despite

the fact that the reserve is close to Calgary and to several tourist resorts where there are plenty of jobs available. The government has insisted that the leadership of the reserve go through some form of electoral process, and has called in Cooper and Lybrand to manage the finances.

Many of the reserves, of course, are extremely well managed and have no problems; but as a result of cases such as the Stony Reserve, the Government is including in FTAs a requirement for transparency and accountability in management, rules against nepotism and mechanisms for the recall of elected officials. The provincial governments are increasingly insisting that the very large amounts paid as compensation for land claims -- one such claim covered the city of Vancouver -- must be used to establish the Native American communities on a properly sustainable basis and to create permanent employment.

Section 35 of the *Constitution Act* of 1982 commits future Canadian governments to the dubious principle that groups defined by race have an inherent right to self-government. The present federal Government's problem is to decide what self-government is to include in practice. Apart from the powers delegated under FTAs, the government has said that, for the sake of preserving the coherence of Canadian society, it will not delegate power over the criminal code, the control of borders, immigration or treaties and postal and banking services. There is a further category of powers that the federal Government cannot delegate on its own initiative without formal agreement from all the Provinces: the administration of justice, prisons, environment and fisheries, labour and training regulations, marriage and divorce legislation, and, significantly, the *Charter of Rights and Freedoms.*

For several years the leading Australian activists, ATSIC, and legal academics concerned with Aboriginal studies have been strongly influenced by First Nation politics in North America; and Senator Herron and his department have studied the Canadian situation in particular at first hand. The Canadians have said that they have learned something from the Australian example, and we can certainly learn something from theirs. But a change of government in either country could take indigenous affairs out of the hands of practical reformers and put it back once again under the influence of romantic enthusiasts.