

RERUM NOVARUM LECTURE
Catholic Commission for Justice, Development and Peace
Melbourne Archdiocese

By Larissa Behrendt
Professor of Law and Indigenous Studies at the University of Technology, Sydney
and the Director of the Jumbunna Indigenous House of Learning.

Reconciliation and Human Rights: The Challenge for all Australians

at Cardinal Knox Lecture Theatre
17 November 2004

The welcome to country is a protocol of the Aboriginal community and it did, throughout the decade of reconciliation, find itself become a part of the protocols in more and more pockets of the wider community. It is prevalent in local council chambers, Universities, meetings and corporate functions. It is more than just an acknowledgement of prior ownership; It is a reminder of the importance of symbols – how the paying respect and giving dignity are important values within any community, a sign of tolerance for difference. It is also a small but important way in which the acknowledgement of Aboriginal people has been incorporated into the psyche of Australians.

But this protocol needs to be viewed in a broader context of assessing where we find ourselves for those of us who still believe in the importance of working towards a reconciled Australia. For me, “reconciliation” is a vision of Australia in which the unfinished business between Aboriginal and non-Aboriginal Australia are resolved. It’s an ambitious agenda, an aspirational one. It is a pathway that seeks to eliminate the difference between the socio-economic status of Aboriginal people and those of the rest of Australia. It seeks to encourage economic development within Aboriginal Australia to stimulate Aboriginal economies. It seeks to enshrine and protect the rights of Aboriginal people – including the rights to access services, to be free from discrimination, to have

languages and cultural heritage protected. And a reconciled Australia imagines a changed community mind-set that facilitates partnerships with Aboriginal people and sees an Australia that acknowledges and embraces Indigenous presence, experience, culture and history.

The official decade of reconciliation is over and it feels that we are perhaps further away from taking that path to reconciliation. It was true to say that there has been a sustained commitment to reconciliation in sectors of the Australian community and through bodies such as Reconciliation Australia, Australians for Native Title and Reconciliation and local reconciliation groups. But it is also true to say that this vision of Australia is not one that is shared by the majority or at least one that the majority of Australians feel is important enough to make a national priority.

Aboriginal issues were absent from the election. Some would say that it is a good thing when elections are not run on race issues that highlight the intolerance and racism of Australian society. But it is also hard not to feel sorrow that the issues of Aboriginal Australia are something that divides the nation rather than unites it.

From the very beginning of his Prime Ministership, John Howard distanced his government from the broad vision of reconciliation. He rejected the notion of rights, the notion of self-determination and stated that his government's approach to Aboriginal policy would be one he labelled "practical reconciliation". With seductive political rhetoric, Howard stated that this policy would focus on the issues that were most important to Aboriginal people – health, housing, education and employment. The government claimed that its commitment to these issues would be shown by its commitment to greater funding for what it referred to as "Indigenous specific programs".

But like most seductive political rhetoric, “practical reconciliation” needed closer scrutiny.

Every one interested in bettering the position of Aboriginal people in Australia would also highlight the importance of health, education, housing and employment as key socio-economic matters to be addressed. However, the funds that made up the \$2.2billion-plus spending on “Indigenous specific programs” included the amounts spent attempting to defeat native title claims and money spent opposing the plaintiffs in the stolen generations test case of Gunner and Cabillo. So “Indigenous specific funding” includes the money spent defeating Indigenous issues and Indigenous claims.

But there are some more fundamental problems with this approach. It seeks to draw a false distinction between the protection of rights and a policy agenda. The plethora of issues that face Aboriginal Australia will require a more sophisticated approach than simply targeting problem areas with policy and a more sophisticated approach than simply relying on the rhetoric of rights. The false either/or dichotomy of policy and rights fails to appreciate the link between the need for effective policy and the need to protect the inherent rights of Aboriginal people from violation. The false division between the socio-economic issues – family violence, substance abuse, socio-economic disparity – and the rights agenda is unhelpful as it places one strategy in competition with the other.

Instead, the relationship between the two should be viewed as a trajectory with policy initiatives at one end and structural changes on the other. Policies will only help to achieve long-term change if they work towards a broader and systemic vision of change at the same time as they target inequality and can identify problems in the short term.

Similarly, long-term strategies are ineffective unless the strategy for achieving them includes considered and targeted policy.

This approach always reminds me of something that Roberto Mangabiera Unger, the world-renown critical legal scholar, wrote:

It is true that we cannot become visionaries until we become realists. It is also true that to become realists we must make ourselves into visionaries.

It is this mix of pragmatism and forward vision that needs to unite in approach to Aboriginal issues.

There has been an ideological force driving the policy of “practical reconciliation.” The ideologies of assimilation and mainstreaming have re-entered the approach to Aboriginal issues at the national level. The pursuit of these ideologies has seen the agenda to dismantle the national representative structure that was part of the Aboriginal and Torres Strait Islander Commission (ATSIC) and it has seen the major programs for Aboriginal people shifted from Aboriginal and Torres Strait Islander Services into mainstream departments. No doubt these moves will appease the constituency who has always resented the attention to Aboriginal issues and has interpreted the need for targeted programs as “welfare bludging” or “getting something for nothing”.

But the real danger with the move is that the ideologies of “mainstreaming” and “assimilation” have failed in the past to shift the poorer health, lower levels of education, higher levels of unemployment and poorer standard of housing that Aboriginal communities have experienced. These ideologies have not offered ways to protect Aboriginal cultural heritage, interest in land, language. And they have not offered a way

in which Aboriginal people can play the central role in making decisions that will impact on their families and communities.

In the past, the failure of mainstreaming has stemmed from its inability to target specific issues that arise in Aboriginal communities in relation to health, education, housing and employment. This is because mainstream services need to develop specific mechanisms and strategies for Aboriginal clients and they have to do this with stretched resources. In addition to these challenges, Aboriginal people claim that they are often subjected to racism within those mainstream services. Those claims of racism, particularly in relation to the delivery of health services, were well documented in the Royal Commission into Aboriginal Deaths in Custody.

There is no evidence to show that the ideologies of mainstreaming and assimilation that failed so dismally in the past will work now. This new shift in the delivery of Aboriginal policy and programs does not offer any new insights or any promise of more effective policy-making and program delivery. In fact, it must be emphasised that there is nothing “new” about this ideological thrust that will shape the thinking behind Aboriginal affairs in the next few years.

There is, however, new language that has crept in to this policy approach and that is the language of “responsibility”. The notion of “responsibility” is also seductive political rhetoric that appeals to the section of the community that resents welfare dependency, especially amongst Aboriginal people. Reports in the National Indigenous Times this last week of leaked cabinet documents show the extent to which this approach runs the risk of turning into punitive and paternalistic policy. According to those reports, suggestions were made that would see communities rewarded with DVD players and

pools for good behaviour – turning up to school or cleaning up their rubbish – and punished for bad behaviour – smart cards if there is poor financial management.

The language of “responsibility” was lifted from the approach that Noel Pearson has taken to addressing issues that face Aboriginal communities in Cape York but in that context Pearson was not arguing for the abolition of welfare – as some conservative critics declared – but for the reform of the welfare system to enhance the economic self-sufficiency of Indigenous communities. That is, rather than seeing “responsibility” as a concept where poor people were rewarded or punished by government, Pearson’s main aim was to ensure decision-making power was returned to a regional community level. It is through this arrangement that the specific and pressing needs of the Indigenous community can be more adequately met. He has also expressed frustration at the focus on broader rights issues at the expense of the very real and urgent, life and death issues that face Indigenous communities in his area of Cape York.

In expressing that frustration Pearson does not appear to reject a rights agenda – though some conservative commentators credit him with doing so. That is, Pearson understood in this strategy that targeted policy needed to be linked with structural change, with a rights agenda. What is also noticeable in Pearson’s approach is that he understands that the most effective policies and programs will be developed from the community level up. This is so because communities are better at identifying their needs and priorities, they are better at knowing what mechanisms for service delivery will suit the people in their community and the policies and programs will work better if communities feel some ownership of them. That is, these programs and policies work better if they are based on recognising the principle of self-determination.

During this time of masking “mainstreaming” and “assimilation” as “new” policy initiatives, there has been notably *no* substantial increase in funding commitments to the key socio-economic areas that were supposed to be the focus of “practical reconciliation”.

Take the example of Aboriginal health. During the free-spending promises of the election from both major parties, there was no increase in funding to Aboriginal health. Access Economics, in a report titled *Expenditures on Aboriginal and Torres Strait Islander Health*, estimated that Indigenous health needs were under-funded by \$452.5 million a year. When it is remembered that over \$60 billion is spent on health by governments each year, this under-funding would require less than a 1% increase in that spending. As Australians for Native Title and Reconciliation have noted, the Federal budget for 2004/2005 allocated only an additional \$10million for primary health care, 40 times less than what was needed.

There is another factor that complicates service delivery and policy-making in this era. Evident in the policy released by the Liberal Party in the lead up to the election was the romanticism of remote Aboriginal communities as being more needy than those in urban and rural areas. There is no doubt, and research supports the finding, that remote communities are, relative to other Aboriginal communities more in need of support and services. However, only 24% of the Aboriginal community live in remote areas and many of the government’s policies only target those communities. This leaves out communities in Walgett, Redfern, Framlingham, Brisbane, Melbourne and Sydney. When looking at the poverty in areas like Mount Druitt and the Redfern Block and in looking at the range of socio-economic issues that face those communities, a policy that states that these are

issues just as easily tackled by mainstreaming – as opposed to targeted – policy and program delivery is not convincing.

While it is perhaps easier politically to gather support from the broader Australian community for dealing with problems in Aboriginal communities where the population looks more like “real” Aborigines, it is irresponsible – and in the end, bad policy – to ignore the other 76% of the Aboriginal community. Australian Bureau of Statistics data consistently holds that these communities – whether urban or rural – also suffer from lower education, higher unemployment, poorer housing and poorer health than all other Australians. To leave them out of policy focus will only lead to more social problems later on.

One of the key challenges to the delivery of health and education in particular is that they are areas in which responsibility is shared between federal and state/territory governments. There was one initiative by the Howard government that promises to shed some light on the cost shifting between governments and the poor communication and co-ordination between government departments at both levels.

This promise was held in the Council of Australian Government trials in seven Aboriginal communities that sought to experiment with what would be a “new” and co-ordinated, whole-of-government approach to service delivery. Unfortunately, these trials have yet to be thoroughly evaluated and information on them is hard to obtain. They are important because, whether they succeed or fail, they will provide insights into a co-ordinated approach to service delivery and this could, if used honestly, openly and properly, provide the basis for research-based policy – and that would be a “new” approach to policy making for Aboriginal communities.

However, against the current but “old” thinking of assimilation and mainstreaming, the Howard governments approach continues to marginalise the rights agenda. It denigrates as “elite” and “out-of-touch” those who seek to invoke the principles of human rights and who use the language of self-determination. This has been a device that has appealed to the anti-intellectualism that is too prevalent in Australian society and it is a sly way to silence advocates for Aboriginal people who usually employ the rhetoric of rights to explain the claims and aspiration of Aboriginal people, their families and their communities – the claim for native title rights, the desire to engage with the economy, the right to enjoy language and culture, the right to a family.

And this rights rhetoric has the intention of making real changes to the lives of Aboriginal people, namely, their access to education, their employment opportunities, their standard of living (including housing) and improving their health. Rights are entitlements and they are a call for structural change, for an evening out of the playing field. But they are only relevant if we remember their importance to our everyday lives.

Eleanor Roosevelt once said:

Where, after all, do universal human rights begin? In small places, close to home – so close and small that they cannot be seen on any map of the world. Yet they *are* the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory or farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning here, they have little meaning anywhere.

This quote is a reminder of how important it is to remember the impact of laws and policies on people and to remember the effect when their basic rights are not protected.

Indigenous people are obvious examples of this failure to protect human rights but there is another example early this year that I thought reflected on how low our human rights standards have fallen in Australia. At the Australia Day ceremony in the Australian Capital Territory, the Chief Minister Jon Stanhope gave an address and in it he mentioned that he was ashamed, as an Australian, of the policy that saw the locking up of the children of illegal immigrants and refugees. As a result of these statements, his power to officiate over these ceremonies was revoked by the Federal Government. There were two questions for me about this: firstly, if the Chief Minister of the ACT cannot enforce his rights of free speech and political expression, what hope is there for a single Aboriginal mother with four children in Wilcannia? And secondly, why weren't Australians outraged about this blatant breach of Mr Stanhope's basic human rights?

This has been an era for the silencing of voices. As an Indigenous woman I feel it acutely with the dismantling of a representative national voice but this is reflected in other trends – the cutting of the budget to the Human Rights and Equal Opportunity Commission, the increase in powers to ASIO under the guise of national security and the silencing of many charitable organizations who were social commentators until the job network contracts they signed forbade public comment.

This trend in silencing on public comment comes at a time when social commentators have observed that Australian society is becoming more visibly racist, xenophobic and introverted. The direction and shaping of Australia seems to be informed

more by the fear of the unknown and the desire for security rather than an understanding that a growing divide between rich and poor where the poor are subjected to punitive conditions and the attempts to regulate their behaviour is the formula for an unstable, unsafe and intolerant community. A large part of this fear of others, particularly refugees, Arabs and Aboriginal people, seems to be related to an “us” and “them” mentality within an increasing sector of the Australian population.

I have seen this hardened opinion in the work I undertook as a member of the ACT Bill of Rights Consultative Committee. During the community consultation processes in our inquiry as to whether there should be a Bill of Rights in the nations capital, there appeared a strong reluctance to recognise the rights of minorities. Feedback from those consultations included comments such as “if a Bill of Rights includes the protection of Indigenous people, it will not be for the benefit of all Canberrans” and “if a Bill of Rights mentions Indigenous rights and the rights of other minorities it will have no legitimacy.”

What is noticeable in this example is the meanness of spirit about the possible protections that a democratic society can offer. This mentality protectively guards the rights and benefits that are given to citizens within a community and seems to assume that if those rights are extended to the poor, the culturally distinct and the historically marginalised that they – middle-class, Anglo-Celtic, Christian – will be worse off. This worldview sees the recognition and protection of the rights of the disadvantaged and culturally distinct as being in direct competition with their own position. It is this “us” and “them” mentality that psychologically separates one sector of the community from the other.

It is perhaps easy to understand the tenacity to which middle Australia clings to its position in a time of economic uncertainty and change. When middle Australia feels vulnerable about its own economic position, it is no wonder that the fear of change and the fear of the unknown is unsettling. But this explanation does not forgive the way in which the fear of uncertainty and the desire for security translate into racism and xenophobia. And it should not forgive the failure to recognise rights nor to endorse their breach.

If we are to have a society that values fairness, equality and justice, we must move from an “us” and “them” mentality and realise that we are, as Indigenous and non-Indigenous people, bound to each other’s fate. As a colonised people, we have long understood that we are beholden to the fate of non-Indigenous Australia. But we do not as often enter into the consciousness of Australia’s dominant culture the way that we should.

Far from being the special and separate sector of the Australian community, we are its benchmark. The way to measure the effectiveness and fairness of our laws is to test them against the way in which they work for the poor, the marginalised and the culturally distinct. It is not enough that they work well for the rich, well-educated and culturally dominant. This measure of fairness and equity rejects an “us” and “them” mentality and holds that our fate and our worth as a society are measured best by how the most disadvantaged within our community fare. By valuing laws, policies and practices that work best because they achieve an equality of outcome, society begins to understand that extending the protections of a democratic society to those who are marginalised does not disadvantage another sector; it actually makes everyone better off.

Indigenous people are the best measure of the fairness of Australia’s laws and institutions. As a historically marginalised, culturally distinct and socioeconomically

disadvantaged sector of the Australian community, our treatment within Australian society is its success or its condemnation. Viewing Indigenous well-being in this way moves us from the periphery of society's consciousness to its centre. Not only does this erode the "us" and "them" mentality, it also moves to a mind-set that sees the transmission of the benefits of a democratic society to the disadvantaged as a transaction that will enrich society as a whole, a "win-win".

This shift is a huge challenge at this time in our history. It was hard enough for Indigenous people to affect change through a representative body that was integrated into the federal bureaucracy and had a system of regional councils to provide advice and policy direction. With that being replaced by a group of hand picked Howard government advisory-only appointees who have no responsibility to Aboriginal communities, it will be difficult and with a Coalition controlled senate, it will be almost impossible.

But it is worth remembering at times like these something that Martin Luther King once said, "In the end, we will remember not the words of our enemies, but the silence of our friends." In a similar vein he commented, "Our lives begin to end the day we become silent about things that matter."

I have reflected a lot on that sentiment in the last few years and perhaps, in light of the increased power that has been given to the Howard government, it is easier to feel that such sentiments do not hold out much hope, that something more is needed to provide inspiration. And for that inspiration, we can look in two places.

Firstly, we must always remind ourselves that we are more powerful than the institutions that we created. There is no skin and bones, no breath or beating heart in the Constitution or in any piece of legislation. We have more power as thinkers and speakers than the paper on which policies are written and the bricks which make up our

houses of government. Always we must remember that we, as people, have the power to make changes.

Secondly, I take hope from the fact that I have seen so much of that agency in the people around me. I look to the resistance and commitment from those who participated in the Bridge Walks for reconciliation, who took part in the Sea of Hands, who signed the “Sorry” books and who joined Australians for Native Title and Reconciliation and their local Reconciliation groups. These were powerful displays from broad cross-sections of the Australian community who said, in their own way, that the government policies on the stolen generation, native title and reconciliation did not represent their views.

But I take even more comfort in the power of the individual to facilitate positive change for those around them when I look at the achievements within my own community. I look at Aboriginal leaders like Marcia Langton, Peter Yu and Jackie Huggins who have worked tirelessly for decades on national and local issues. They have been consistent critics of ineffective government policy but have been more than just vocal hecklers; they have matched their criticism with grass-roots initiatives that seek to alter or subvert policy and legislation.

The most exciting and transforming activities at the moment within the Indigenous community are not propelled by government policy but have been facilitated by Indigenous people themselves. Economic development in the Kimberley and experiments with new governance models by the Noongar Nation in Perth, the Cape York partnerships and the Murdi Paaki region in New South Wales show the way in which Indigenous people have, independent of government structures, simply gotten on with the business of creating economic and governance opportunities.

Similarly, the most energetic advocates for policy development have come from within our own communities. And here I think of people like Boni Robertson, Judy Atkinson, Winsome Matthews and Ian Anderson and so many, many others have been quantifying, recording, offering suggestions and finding solutions to issues such as endemic levels of violence in Indigenous communities. These same people and their colleagues are often the ones who set up the community-based initiatives and institutions, the dry-out shelters, the medical centres, the community buses when government policy fails. These successes and examples of agency are not celebrated and instead our communities weather constant attacks on Aboriginal competence and self-determination.

It is always unpopular to argue for the rights of the poor, the marginalised and the disadvantaged. It will always be much lonelier and harder fighting to protect the rights of the minority than to protect the privileges of the majority.

And so, in this climate, I think of the starfish story my father used to tell me as a child. It is a simple story. It is about an old man on a beach that is covered in starfish that have been washed up from the sea. He is picking up the starfish and throwing them back into the water. A young man walks up to him and says that there are so many starfish that it would be impossible to save them all so his hard work is being wasted because it will make no difference. The old man replies simply, "It will make a difference to the starfish that I just threw back into the sea."