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Jack Davis wrote that the Aboriginality we articulate is not ours but what we have inherited from the white mans past¹ This comment by Davis draws upon descriptions of the socio-economic conditions that inform mainstream generalisations and stereotypes of who and what Aboriginal people are. Davis argues that underlying these descriptions prevails the singular premise that white australia, through practices of genocide, racism and discrimination, has itself constructed these images. For Davis these descriptions represent an Aboriginality that has been grafted onto Aboriginal people, rather than an Aboriginality we own. For many writers, both black and white, overcoming these 'deficiencies', commonly referred to as 'disadvantage', has required opportunities for Aboriginal people to claim a more prominent role in their own affairs, particularly administrative decision-making roles. Davis himself discusses closing the gap between Aboriginal people and the administrative machinery that drives a democratic society.²

Over the last thirty years, this process of democratisation has progressed rapidly and the changes are significant. In contrast to administrative regimes of the past, Aboriginal inclusion within administrative institutions are now highly visible. The establishment of the Aboriginal and Torres Strait Islander Commission, National Park Joint Management Committees, Aboriginal Justice Advisory Committees, Aboriginal and Torres Strait Islander Health Services, Legal Services, Child Care Agencies, Housing Cooperatives, Aboriginal and Torres Strait Islander Units within Commonwealth, State and Local government agencies, reflect some of the ongoing shifting perceptions of black and white relations in Australia. As a result of these changing administrative relationships, the Aboriginal role has emerged from that of isolated recipient of bureaucratic process to intimate participant in decision-making processes and responsibilities.

On this evidence Aboriginal people are now well established within Australia's democratic institutions when compared with the context described by Davis. The current levels of Aboriginal participation within these administrative arrangements has provided opportunities to influence political, social and economic policy within agencies, as well as opportunities to influence the parliamentary and legislative frameworks that govern agency action. It could therefore be stated that the aim of Australia's more recent approaches to Aboriginal people and the issues that confront them, has been the inclusion of Aboriginal people within the liberal democratic system.

This inquiry seeks the continuation of this project by considering alternative arrangements for entry, but not to the exclusion of existing practices, for Aboriginal people to have a presence in the parliament itself. Unfortunately, it would appear from the discussion points raised in the issues paper that key questions relevant to this inquiry have gone amiss. Firstly, what does this process of inclusion mean? Should we take as a given that Australia's liberal democratic institutions are appropriate or even adequate mechanisms to represent the needs and articulate the interests of Aboriginal people? What impact does the democratisation of Aboriginal people have on issues of "Aboriginality" and identity?

¹ Davis, J. "Aborigines and white society", *Identity*, Vol. 1 No.10, March 1974 p.10

² *ibid*

Liberal Inclusion: What does it mean?

The easiest way to explain what inclusion means is to make reference to what it does. At its most basic level, we can describe the process of liberal inclusion as one that requires the political assimilation of Aboriginal people into the prevailing values and practices of Australian citizenship.³ That is, the process of liberal inclusion is about linking Aboriginal people to the political culture that informs societal life in Australia.

Galligan describes political culture as

encompassing the set of shared ideas, assumptions, preferences and customs that are usually taken for granted in a political system but are essential to its operation. Political culture is reflected in the design and functioning of political institutions, and is a significant factor in accounting for political habits and rhetoric.⁴

Central to Galligan's definition is the status of values. That is, values shape political institutions; which in turn shape the relationships between members of society and those institutions. When the Royal Commission into Aboriginal Deaths in Custody investigated underlying issues that influenced the over-representation of Aboriginal people in the criminal justice system, it commented that

... These relations were entrenched not only by acts of dispossession but also by a wide variety of ideas, beliefs, and economic, legal, political and social structures which institutionalized and perpetuated them.⁵

and;

The great lesson that stands out is that non-Aboriginals who currently hold virtually all the power in dealing with Aboriginals, have to give up the usually well-intentioned efforts to do things for or to Aboriginals, to give up the assumption that they know what is best for Aboriginals...who have to be led, educated, manipulated and re-shaped into the image of the dominant community. Instead Aboriginals must be recognised for what they are, a people in their own right with their own culture, history, values...⁶

These descriptions by the Royal Commission illustrate the relationships between structural deficiencies in mainstream institutions to issues confronting Aboriginal people. The comments explicitly relate structures to values. That is, the cultural assumptions and values that direct a particular view of society predicate institutions.

Since the 1970s the practice of liberal inclusion has generated greater opportunities for Aboriginal people to access the various agents of the state. However, as suggested by Galligan, it has far deeper implications that pertain to the context in which Aboriginal people

³ Stokes, G. "Australian Democracy and Indigenous Self-Determination, 1901-2001" in *Australia Reshaped*, (ed) Geoffrey Brennan & Francis Castles, Cambridge University Press 2002 p.181

⁴ Galligan, B. "Political Culture and institutional design" *Towards an Australian Bill of Rights*, (ed) Phillip Alston Centre for International and Public Law, Australian National University Canberra and the Human Rights and Equal Opportunity Commission Sydney. 1994 p.58

⁵ *Royal Commission into Aboriginal Deaths in Custody*, 1991, Vol. 2 Ch.10 p.5

⁶ *Royal Commission into Aboriginal Deaths in Custody Regional Report on Inquiry in New South Wales, Victoria and Tasmania*, 1991. p. 29

and the issues confronting them are considered and understood. The frames of reference currently engaged to consider Aboriginal people emerge from a liberal democratic tradition with a Westminster system of governance. The incorporation of Aboriginal people into the liberal democratic state serves to reconstruct their behaviour into compliant civic actors within the Westminster system. The political disposition here is to reshape Aboriginal understandings of themselves and their needs to conform better to established forms of political and administrative rationality.⁷

While a path of “good intentions” guides the process of liberal inclusion, the implications of the practice does not create a new history of relations between Aboriginal and non-Aboriginal Australians. The major distinction between practices prior to and after 1972, are fundamentally assessed on the “capacity” of Aboriginal people to participate within mainstream institutions in accordance with “their” responsibilities as effective citizens in a liberal democratic state. Unfortunately, the benchmark upon which this assessment takes place provides no recognition of Aboriginal values in relation to governance.

Are Australia's liberal democratic institutions appropriate mechanisms to represent the needs and articulate the interests of Aboriginal people?

Under the ‘flat iron’ of Australian egalitarianism, the rhetoric of equality and ‘all australians’ has persistently circumscribed the relationship between Aboriginal and non-Aboriginal people. In terms of agenda and policy, non-Aboriginal values, perspectives and assumptions dominate and control the power of definition. This domination, as illustrated by the comments of the Royal Commission into Aboriginal Deaths in Custody, has characterised Aboriginal relations with the state through the colonial experience, federation and contemporary practices. However, the most significant ‘change’ in this relationship is the co-optation of Aboriginal people into non-Aboriginal administrative structures on the assumption that such mechanisms can adequately accommodate Aboriginal rights and interests.

For example, The Queensland Legislative Standards Act 1992 is an attempt to ensure that legislation before the parliament is consistent with ‘fundamental legislative principles’ that seek to protect the rights and liberties of individuals and the institution of parliament. These requirements test new legislation and are therefore significant in shaping the way in which laws are framed in Queensland. For the protection of Aboriginal interests, the Legislative Standards Act 1992 seeks to ensure that new legislation has sufficient regard to Aboriginal tradition. As articulated during the second reading, the Legislative Standards Bill was encapsulating Westminster democracy.

The groups that suffered most when Westminster democracy arrived in the colony of New South Wales—the groups that lost almost all—were the indigenes. In Queensland, these groups are the Aborigines and Islanders. Whites, ... might celebrate the British tradition of democracy; they have nothing to celebrate. This Bill injects into the drafting of legislation in Queensland consideration for Aboriginal tradition and Island customs.⁸

It seems rather naive to suggest that the consideration of Aboriginal tradition within a Westminster system, can restore to Aboriginal people ‘what was lost’, when, as stated above, it was these very same people who suffered most when this western system of democracy was introduced. It holds the belief that despite the distinct cultures, values and interests of

⁷ Stokes, G. “Australian Democracy and Indigenous Self-Determination, 1901-2001” in *Australia Reshaped*, (ed) Geoffrey Brennan & Francis Castles, Cambridge University Press 2002 p.181

⁸ Parliamentary Debates Queensland Legislative Assembly 21 May 1992 p. 5505

Aboriginal people, in the broad consensus of the values that underpin Australia's political institutions they are considered in common.

In relation to cultural heritage practices, the recognition of 'traditions and customs' is an initiator for arrangements of co-management with the state. Within these practices there is an opportunity for Aboriginal people to manage these areas on their own. What is interesting in the management transfer is that this can only eventuate when Aboriginal people themselves are sufficiently operative in non-Aboriginal land management practices. The recognition of 'traditions and customs' has somehow become irrelevant. It would appear that the application of sufficient regard to Aboriginal tradition is used as a mechanism to include Aboriginal people into consultative process regarding issues that impact upon them. Unfortunately, the initiation of processes, which primarily account for and reflect the notion of procedural fairness, does not equate with the recognition of Aboriginal people as Aboriginal people.

These views were expressed by Justice Mathews in the 1996 Report to Senator John Herron regarding the Hindmarsh application for protection, which comments

The events precipitated by the bridge proposal have thus far revealed many deficiencies in Commonwealth laws designed to preserve and protect areas and objects of traditional Aboriginal significance...Some are attributable to poor drafting of the legislation...However the most pervasive of the deficiencies is much more difficult to rectify than a piece of legislation. It reflects the fundamental differences between the introduced common law system and the legal system of the indigenous oral culture. This latest episode in the Hindmarsh Island bridge saga has provided graphic illustration as to how little our apparently beneficial heritage legislation has accommodated to the realities of Aboriginal culture.⁹

As Justice Mathews determined during the review of the Hindmarsh application, the most fundamental inadequacies can be found in the attempt of an introduced European common law system to protect these rights without recognising Aboriginal legal systems. To reapply this theme, if the Westminster system of democracy and law secures the rights and liberties of individuals, where does the balance of justice lie for a people whose systems are founded upon the rights of the collective?

It is the nature of the relationship between Aboriginal people and government that requires evaluation not just the mechanisms of participatory models that sustain existing and past practices. In 1992 the legal fiction of *terra nullius* was buried by the Australian High Court in relation to land and settlement. Unfortunately, Australia's political institutions, administrative structures and practices in Aboriginal affairs have been unable to lose that history in social policy.

What impact does the democratisation of Aboriginal people have on issues of "Aboriginality"?

From the beginning of white invasion, the very category 'Aborigine' assisted in the process of colonisation. By categorising Aboriginal people as a 'primordial or primitive other', whites also asserted the superiority of their own collective European identity.¹⁰ Such conceptions provided part of the rationale for the dispossession and removal of Aboriginal people from

⁹ Commonwealth Hindmarsh Island Report, 27th June 1996 p.1

¹⁰ Stokes, G. "Citizenship and Aboriginality: Two Conceptions of identity in Aboriginal Political Thought" in *The Politics of Identity in Australia*, (ed) Geoffrey Stokes, Cambridge University Press 1997 p. 158

their lands, a violent attempt of elimination, and the denial of their political rights.¹¹ Although much has been written by Aboriginal and non-Aboriginal authors, about Aboriginal attempts to alter these conceptions, it remains questionable if these descriptions have offered 'real', as opposed to 'imagined' insights, in articulating the relationships between Aboriginal and non-Aboriginal Australia. What has been described and perceived as 'real' by these authors, may in fact be a product about Aboriginal people, which was originally constructed from the imagination of white Australians. Jack Davis wrote:

For the average Aboriginal today whether he is tribalised or not, life is one continuous struggle. Although he pays his taxes, if he is a town or city dweller the electric light and rental bills, he is at a distinct disadvantage because of his inheritance of his Aboriginality from the White Man's Past.¹²

This inheritance has underpinned Aboriginal political movements from the 1930s to the present. In the 1930s such movements pursued their efforts on 'similarities' with non-Aboriginal Australians. The primary issues for these writers were the widespread denial of justice and equality, and the limited conceptions of Aboriginal identity upon which state governments based their policies.¹³ It was a political movement looking for rights, that is citizenship, that could be bestowed. However, after the 1967 referendum, Aboriginal political movements situated themselves in the discourse of 'difference'. The Aboriginal Tent Embassy, the Aboriginal flag and more recently, native title, are examples of this expression.

But is this difference theirs or ours? Are we still relying upon the Aboriginality we 'inherited' from the white man's past to identify ourselves? The current representation of Aboriginality, while speaking the rhetoric of 'difference', situates Aboriginal people in the position of 'other'. It is continually delivered from a position of subordination to that of white Australia. That is, the 'Aboriginal position' is presented in a way that has been influenced by the capacity and commitment of government to recognise and respond to our assertions as Aboriginal people. If the political reality has such an influence in shaping Aboriginal positions then it seems highly unlikely that what is being proposed is not, in a pure form, an Aboriginal position. Therefore, such pragmatic approaches operating under the guise of assertions of 'Aboriginality' are in actual fact, representations coming from within the discourse of the 'other'. They represent a movement not so much about the advancement of Aboriginality that has ownership, authorship and authority within Aboriginal people themselves, but a movement that could be described as false radicalism.

What is important here is the way in which we understand and promote our 'difference'. In particular, looking at ourselves from the point of view of our own definition and authority. That is: as subjects. The discourse of 'difference' is explicitly tied to the status of Aboriginal people as described by Michael Dodson,

...the fundamental rationale for current policies of social justice should not rest on the past absence of rights or on plain citizenship entitlements. It should rest on the special identity and entitlements of indigenous Australians by virtue of our status as indigenous peoples.¹⁴

¹¹ *ibid*

¹² Stokes, G. "Citizenship and Aboriginality: Two Conceptions of identity in Aboriginal Political Thought" in *The Politics of Identity in Australia*, (ed) Geoffrey Stokes, Cambridge University Press 1997 p. 165

¹³ Stokes, G. "Citizenship and Aboriginality: Two Conceptions of identity in Aboriginal Political Thought" in *The Politics of Identity in Australia*, (ed) Geoffrey Stokes, Cambridge University Press 1997 p. 160

¹⁴ Dodson, P. "Public Administration of Aboriginal Affairs has not been Humane Enough" *Canberra Bulletin of Public Administration*, No. 73 September 1993 p. 9

Unfortunately, our representations of 'Aboriginality' undermine the very status upon which we articulate our difference because we place ourselves within their paradigms of 'object' and 'other'. For example, on principles of empowerment we continually seek to have control and ownership of decision-making processes based on our status as Aboriginal people. However, when we apply these principles we avail ourselves to being involved in mainstream decision-making structures. When we do become involved, we share our decision-making capacities; we have no control or ownership over them. We continue to accept such outcomes largely because we have yet to fully articulate ourselves outside of 'their' paradigms. Subsequently, all we really achieve is to provide credibility to processes whose structural characteristics are influenced by the discourse of the 'other'.

Within these paradigms, Aboriginal participation is always promoted in the positive in the belief that it is better to be involved in the process to ensure some input. The limited influence of this input, not only leads to a contamination of the Aboriginal perspective, but it also serves to legitimise white Australian definitions and processes of Aboriginality. If we continue to present a description of ourselves that has been constructed in the discourse of the 'other', we only serve to legitimate that discourse and our position within it.

What is needed are approaches that enable us to value the gains of Aboriginal participation in administrative arrangements. This requires a shift in evaluation practices where the benchmarks are set not by white Australia, but by us. Unfortunately, the articulation of our own Aboriginality outside of such descriptions represents the developments we have yet to make. To do this successfully requires of us an understanding of how modern practices of containment are articulated and maintained by government. As Hart argues,

...new technological advances and the materialism it generated should not be confused with a sea change in ideologies that suggest the colonised do not endure the same oppressive regime as in the beginning, the middle or in the present historical context. Postcolonialism merely represents another calibration of politics that nomadically hunts and gathers inside the discursive landscape established by colonialism and the dispossession of the invaded...¹⁵

Aboriginal people continually find themselves enmeshed in the terms of a debate with regard to rights that exist above those entitlements found within citizenship, yet governments respond with legislative frameworks of containment, operating through processes that reduce the right to a right that *is bestowed* to Aboriginal people.

History and Aboriginal experience has illustrated the inability of the existing system to relate to ideas or a currency other than its own. In the political discussion between government and Aboriginal people, the exchange between black and white is grounded in an all white currency – that of assimilation – because this is the only currency they understand. As the dominant cultural group, they are empowered to state what the medium of exchange will be; what 'currency' the process is going to use. When Aboriginal people enter these processes, they encounter the reality that only one currency can be dealt in, and *it is not Aboriginal*. This alienates Aboriginal people from our own valuables, our own non-negotiables and seduces Aboriginal people to give these up in exchange for the opportunity to spend the white currency. Under current administrative practices, Aboriginal people make themselves available to processes that can only imagine the Aboriginal reality. I say imagined, because no recognition of Aboriginal people can exist outside the white frames of reference that direct mainstream legal, political and social institutions seeking Aboriginal involvement.

¹⁵ Hart, V. unpublished paper 1998 p. 9