Indigenous citizenship

The politics of communal capacities

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This article attempts to discuss ‘citizenship’ without drawing on notions of ‘right’. Following the suggestion that citizenship includes a dimension of ‘capacities’, this article describes Australia’s policies of ‘assimilation’ and ‘self-determination’ as ideal and practical configurations of indigenous capacities. I argue that political struggles around indigenous citizenship can be conceived as arguments about the practical effectiveness (including the legitimacy) of such configurations. In the final part of the article, I illustrate this approach by describing two horizons of indigenous policy development: the discussion of the Aboriginal Land Rights Act (NT) occasioned by the 1998 Reeves Report, and the Victorian government’s application of the neo-liberal ‘purchaser-provider split’ to the servicing of that states’ indigenous people.

INTRODUCTION

On ‘Australia Day’ (26 January) 1938, indigenous people staged a ‘Day of Mourning’ in the midst of the colonists’ sesquicentenary of British invasion. A meeting of one hundred in Sydney resolved their

protest against the callous treatment of our people by the whiteman during the past 150 years, and we appeal to the Australian nation of today to make new laws for the education and care of Aborigines, and we ask for a new policy which will raise our people to full citizen status and equality within the community. (quoted in Horner and Langton 1987, p.29)

I want to outline a perspective on indigenous citizenship which picks up on a possible implication of the phrase ‘raise our people’ – that is, the theme of citizenship as capacity, not only citizenship as right.

Some seminal formulations of liberal notions of governance insisted that individual liberty is founded on an individual’s capacity to govern him or herself. John Stuart Mill, in his introduction to *On Liberty*, stated: ‘It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties’ (cited in Valverde 1996, p.360). Both the meaning of the phrase ‘their faculties’ and the criteria of their ‘maturity’ are open to conflicting views. Indeed, my basic point in this article is that the politics of
indigenous citizenship is a struggle not only over notions of right but also about ways of being present and effective, that is, about capacities for indigenous participation.

In drawing attention to 'participation' as a dimension of citizenship, I follow Janoski's recent emendation of the theory of citizenship. He adds participation to Marsall's classic three part schema of 'legal', 'political' and 'social' rights:

Participation rights involve the state's creation of rights in private arenas, whether in market or public organizations. Just as political rights are public powers of action, participation rights are state-assured private powers of action. They refer to the individual and group rights to participate in private decision making through some measure of control over markets, organisations, and capital. (Janoski 1998, p.32)

Let me highlight two phrases in this quotation: 'state-assured private powers of action' and 'individual and group rights to participate'. I suggest that both these phrases point to what I am calling citizenship 'capacities'.

In the second section of this article I will draw attention to an Australian tradition of treating indigenous capacities as problematic. In the third section, I will argue that this concern for indigenous capacities was radically transformed in the late 1960s and early 1970s, so that the emphasis was less on the capacities of indigenous individuals and more on the capacities of indigenous collectives. That is, I will argue that by passively resisting much of what was offered them in the name of 'assimilation', indigenous Australians have challenged governments to help them to reinvent their citizenship as a set of communal, not merely individual, capacities and rights. The outcome of this challenge has been the ongoing politics of 'self-determination'. In the remainder of the article I will illustrate the contemporary politics of indigenous citizenship capacities by outlining two recent developments in public policy: the Reeves Review of the Northern Territory Land Rights Act and the Victorian government's 'Koori Services Improvement Strategy'.

UPLIFT

The phrasing of the Day of Mourning resolution can be read as alluding to the problem of the 'faculties' of indigenous Australians. That is, the 1938 resolution sought 'education and care' and it allowed a reader to imagine what kinds of education and care would 'raise' Aboriginal people 'to full citizen status'. A clue to the ways in which education and care would change indigenous Australians can be found in the assumption, among some activists, that not all indigenous people in Australia were ready, in January 1938, to exercise citizenship. One of those present, William Cooper, had written in 1936 that 'the dark man must be taught to be self-reliant and industrious and to win his rights by sheer worthiness' (Markus 1988, p.39).

As Heather Goodall has pointed out (Goodall 1993, 1996), some Koori activists of the 1930s judged that it was not necessarily wise to proclaim unqualified pride in the indigenous heritage. Goodall shows that in the ideologies of Koori and Murri protest at this time the valuation of that heritage was qualified by the activists' respect for modernity. For example, from 1925, the Australian Aboriginal Progressive Association (AAPA)
made claims to land security and to freedom from state interference with family life. The AAPA's rhetoric included confident assertions of indigenous heritage and identity. However, colonial oppression, taking many forms, persisted; it was intensified as the Depression diminished the demand for indigenous labour. The search for a language in which to assert indigenous interests took indigenous leaders into associations with defenders of the other Australians who suffered in the global crisis, that is, the trade unions and the Communist Party of Australia. Goodall points out that radical labour movement criticisms of NSW government practices were grounded in liberal democratic principles of equality of opportunity, appealing to an ideology of modernity. The effects of this political culture on William Ferguson and Cecil Patten can be seen in their pamphlet Aborigines Claim Citizen Rights! in which they assured the public that:

We have no desire to go back to primitive conditions of the Stone Age. We ask you to teach our people to live in the Modern Age, as modern citizens. (cited in Goodall 1993, p.91)

Two points follow from Goodall's careful historical investigations. First, it is misleading to take any one statement by indigenous leaders as definitive of their political consciousness: the terms of indigenous self-representation were (and remain) discursively promiscuous, rather than internally consistent and rigorous. Geoff Stokes has perhaps overstated the contrast between the 'citizenship' rhetoric of the 1930s and the 'identity' rhetoric of the 1970s and 1980s (Stokes 1997, and see McGregor 1993), though his thesis of changing rhetorics is undeniable. Second, one of the ways in which indigenous protest has sought to be persuasive has been to insist (a) that people are capable of acquiring the capacities to be politically and legally equal as citizens, and (b) that governments have a duty to assist that transformation.

Partly as a result of the protests between the two world wars, the suggestion that indigenous Australians could 'improve' and thus qualify for citizenship attracted support among those Australians who wished to reform welfare policies. By contrast, the argument that their heritage already qualified indigenous people for the rights they asserted – notably their rights to land and to freedom from interference with family life – fared badly in Australian politics from the 1930s to the 1960s, the era of assimilation. The assimilation policy which arose as a selective response to the protests of the 1930s sought to include more and more indigenous Australians in the provision of health, education and welfare services, and it sought also to end discrimination against indigenous Australians. But assimilation also justified the further dispossession of indigenous Australians, arguing that reserves retarded the inclusion of indigenous Australians in the Australian way of life. Assimilation also gave new legitimacy to the established practice of removing children from their families in order to 'improve' their prospects. Assimilation policy gave legitimacy to programs which negatively appraised, and purported to enhance, the indigenous capacity for citizenship.

The most articulate and thoughtful advocate of assimilation in any Australian government was Paul Hasluck (later Sir Paul), Minister for Territories from 1951 to 1963 in
the Menzies government. He argued that indigenous Australians had never not been citizens. Rather, he insisted, they were citizens to whom special laws - some enabling, many restricting - had been applied. It was the duty of governments to review continuously the extent of these laws' application. As indigenous people acquired the capacities to live in the manner of other Australians, they should be exempted from the special laws. In 1953, 'at the stroke of a pen', Hasluck exempted those known as 'half-castes' from the Northern Territory's Aboriginals Ordinance. He was responding to a campaign by Northern Territory people of mixed descent who protested at being subject to the same legal controls as applied to 'full bloods'. By 1965 the Commonwealth government had removed most remaining regulations from those Territory residents whom the government had continued (from 1953 to 1964) to class as 'wards'. Other states paralleled this progressive dismantling of the laws restricting indigenous peoples' movement, their associations, their earning capacity and their consumer choices. By the 1970s, Queensland's remaining restrictive legislation was the exceptional survival of state 'paternalism' (Chesterman and Galligan 1997, Ch 2).

Hasluck did not see these reforms as the granting of 'citizenship'. Reformers, he argued, should cease to demand that indigenous Australians be 'given' citizenship. Rather, his critics should say: 'The Aboriginal has citizenship as a right; remove the State laws which restrict him in the exercise of his rights' (Hasluck 1965, p.446). Hasluck's point may seem no more than sophistry to those who chafed under his administration's (and the states') restrictions on their liberty, but his plea is defensible on two grounds. Legally, Hasluck could have cited the Nationality and Citizenship Act of 1948, by which all persons born in Australia were deemed citizens of Australia. Politically, Hasluck's view is embedded within a conception of state responsibility which is familiar and widely accepted in Australia: the state has a duty to regulate the conduct and circumscribe the rights of certain citizens if they lack the capacities essential to conducting themselves as citizens. Hasluck compared some indigenous Australians to other 'incapacitated' citizens: the mentally afflicted, children and youths under 21. It is an essential feature of Hasluck's liberalism that he did not see indigenous Australians as disabled by virtue of their race or their genes; rather, their 'incapacities' were cultural and historical and were therefore open to correction by education. In his view, some indigenous Australians acquired more quickly than others the capacities to conduct their lives without special regulations.

This way of thinking about assimilation and citizenship was enlightened 'common sense' in Australian politics until well into the 1960s. Nonetheless, there were sharp controversies about the implementation of policy - about the pace at which the state could and should lift from the shoulders of indigenous people the yoke of its tutelary controls, about the number of people who should still be covered by such laws, and about how to treat those portions of land known as reserves. My point is that Hasluck could have cited, as an indigenous mandate for this schema of emancipation, some of the language used by Kooris in the 1930s. That is, when health, education and other welfare programs had the effect of enhancing indigenous peoples' capacity for citizenship, and when that achieved capacity was recognised by the state's amendment of a person's legal status,
was not the state obliging the Day of Mourning resolution’s call for education and care so as to ‘raise our people to full citizen status’?

The assimilation era helped to produce a skilful and articulate indigenous critique of this oppression, but Hasluck was ambivalent about such a constituency. In 1965 he referred to the necessity for citizens to be able to challenge government actions by legal or political processes. Some indigenous people lacked ‘familiarity with legal processes’, he regretted. Nor did they enjoy ‘such ready access to the courts as do other citizens’. Accordingly, such people were simply unable to deal with the powers sometimes exercised arbitrarily by police and employers. Nor were indigenous people politically effective: ‘Their political protest may either not be made because of their ignorance, or fail because it may appear not so much a protest against officialdom as one against their neighbours’ (Hasluck 1965, p.440). However, if Hasluck wanted indigenous Australians to be legally and politically effective in their citizenship, he did not want them to be effective as indigenous people: he was appalled by the emergence of a self-consciously indigenous citizenship. Hasluck condemned what he saw as divisive ways of championing indigenous Australians’ rights. In 1959 he complained of the unhelpful ostentation of much of the debate about welfare policies: it militated against the gradual elimination of Aboriginal identity. He warned against the kind of concern which has the effect of ‘heightening race consciousness on both sides’. Any ‘heightening of race consciousness becomes an obstacle to the process of assimilation ... we do not want to become more and more conscious of their differences from us but of their likenesses to us ... When we see them taking themselves naturally and escaping notice for heaven’s sake keep their privacy sacred’ (Hasluck 1959).

In Hasluck’s conception, the success of the training offered in government and mission programs depended on the trainee’s willingness to escape the cultural traps of communal association and identity. Assimilation policy aspired to enable individuals by breaking the solidarities of the communities in which they were embedded. The closure of reserves and the constitution of the discrete indigenous household among non-indigenous households was an assault on indigenous traditions of communality.

TOWARDS INDIGENOUS COLLECTIVISM

In the 1960s critics began to argue that Hasluck’s persistent efforts to govern indigenous people as individuals and as discrete households rested on an unnecessarily negative view of the communal dynamics of indigenous life. Such critics urged governments to harness, rather than undermine, these communal capacities. In making this argument it was not necessary to affirm any version of ‘Aboriginality’. The point could be made in more negative terms: indigenous peoples’ ‘emancipation’ from their communal heritage imposed a psychological burden on indigenous Australians and inspired a closing of ranks which undermined governmental efforts to solicit social change. Charles Rowley, the director of the Social Science Research Council’s 1960s research project on the history and current circumstances of indigenous Australians, made no reference to the virtues of Aboriginality when he argued against governments’ counter-productive individualism:
The aim of 'assimilation' has been to winkle out the deviant individual from the group, to persuade him to cut the ties which bind him and his family to it, and to set him up as a householder in the street of the country town. But policies which aim to change social habit by educating individuals, while ignoring the social context which has made him what he is, can have only limited success. A program involving social change must deal with the social group. (Rowley 1971, p.417)

His argument owed nothing to cultural nostalgia; rather he was drawing the lessons of assimilation policy's failures (foreshadowed in Hasluck's fears).

Rowley's suggested improvements in governmental technique were taken up by the Council for Aboriginal Affairs (CAA). The Prime Minister, Harold Holt, set up the CAA in November 1967 to advise the Commonwealth government on how to develop policies consistent with the goodwill towards indigenous Australians evident in the 1967 constitutional referendum. In July 1971 the CAA pointed out to the Commonwealth government the possible value of continuities between indigenous traditions of communality and emergent formal modes of indigenous association. 'Often when corporate action has been successful the element of traditional continuity has been important. To regard such continuity as always working against adaptation is mistaken. Often the breach of this continuity has led to demoralisation and disintegration' (CAA 1971). Such thinking eventually bore fruit in the Fraser government's Aboriginal Councils and Associations Act of 1976. Introducing that Bill, Minister Ian Viner argued that:

What is so important about this measure is that it will recognise cultural differences between Aboriginal and non-Aboriginal societies and enable Aboriginal communities to develop legally recognisable bodies which reflect their own culture and do not require them to subjugate this culture to overriding Western legal concepts. (Viner 1976)

As the result of the bipartisan commitment to indigenous incorporation, Australian governments now deal with an indigenous constituency consisting mostly of statutorily defined and locally based councils and associations. There are over five thousand such bodies. Subsequent policy reviews, such as the Royal Commission into Aboriginal Deaths in Custody (1991), have warmly endorsed the centrality of indigenous organisations to 'self-determination'. Incorporation is arguably the most significant act of indigenous political enfranchisement ever accomplished by Australian governments, because it creates the political technology through which to give practical expression to the idea that indigenous people have a distinct set of rights – most importantly, rights to land and to self-government. Though politicians and officials vary in their willingness to acknowledge such rights, there has been little dissent from the view that indigenous incorporation is of great practical utility to government. The emergence of these indigenous capacities for collective political action – what Janoski calls 'state-assured private powers of action' – is therefore a central topic in any consideration of the contemporary conditions of indigenous citizenship.
FROM ASSIMILATION TO SELF-DETERMINATION

So far I have argued that Australian governments have responded with two contrasting policy emphases to the indigenous demand for citizenship. The first policy emphasis – assimilation – placed a high value on the individual and discouraged his or her attachment to the lands and the networks of kin on which persistent indigenous identities were based. The second policy emphasis – land rights with self-determination – recognises continuing communal attachment to land, upholds the value of indigenous family life, and accepts the necessity for incorporated forms of communality.

It is common to think of self-determination policy as succeeding and replacing assimilation. I question this way of narrating policy, on two grounds. First, there remain mixed modalities of government and law. In the 1990s government practices towards indigenous Australians and indigenous actions towards government included both individual-oriented and communally oriented programs and laws. Indigenous Australians, like other Australians, enjoy certain rights and status as individuals. The politics of indigenous citizenship is a persisting interplay and, at times, a contest between these two modalities – individuating and communalising – of government and law. Second, both assimilation and self-determination policies sanction programs of acculturation. Assimilation and self-determination are variations – significantly different, I believe – on an inexorable governmental imperative: the modernisation of indigenous society. Let me illustrate this with an historical example. In advocating incorporation in 1971, the CAA did not need to confront explicitly the broad cultural assumptions of assimilation, because although incorporation purported to reform government practice it also assumed an indigenous willingness to change. Just as assimilation programs assumed, solicited and even coerced change in their clients, so the political technologies of self-determination have made new cultural demands because corporations, councils and associations presuppose such ‘western’ cultural capacities as ‘impersonality’. When Rowley advocated that governments respect Aboriginal group life, he implied also that Aboriginal people should be willing to transform their group life, to develop new forms of association in order to render their collective projects both recognisable in legislation and familiar to established practices of government. The term ‘self-determination’ poses the question: what self or selves? To encourage corporations, associations and councils was to attempt a practical answer to that question.

If there has been any discontinuity with assimilation in the new programs justified as self-determination, it has not been that governments have ceased to solicit indigenous cultural change; rather, the governmental pressure to change has altered in its character and in its direction. The ideal indigenous citizen was no longer simply an individual wage-worker or housewife who had left his or her Aboriginal identity far behind; he or she was now a person who enacted their state-sanctioned indigenous identity by participating in that modified form of group life known as the organisation. In the government of indigenous Australians, the state has learned to solicit the virtues and capacities not of individual, but of collective, citizenship. These organised citizens would be able, even encouraged, to retain features of their traditions.
In drawing attention to the continuities between assimilation and self-determination, I am not trying to suggest that self-determination is a trick, merely that assimilation in a new guise. Insofar as self-determination policy has encouraged indigenous Australians to become a constituency of groups and organisations, it has substantially transformed the practices of government and the demands of indigenous citizenship. If we are to understand the contemporary issues of indigenous citizenship, we should try to hold in mind simultaneously a narrative of continuity and a narrative of discontinuity between assimilation policy and self-determination policies. In the remainder of this article I want to illustrate the proposition that the phrase ‘indigenous citizenship’ names a field of contested political possibilities. My illustrations come from the two domains in which indigenous organisations are now relevant to self-determination: land ownership and service delivery.

LAND-HOLDING UNITS

Australia’s various land rights laws (Commonwealth (NT) 1977; South Australia 1966, 1981, 1984; New South Wales 1983; Victoria 1984; Queensland 1991) created communal property rights. The High Court, in its 1992 Mabo decision, recognised an indigenous tradition of law, provided that the Murray Island plaintiffs formulated their customs of property in land as communal. In 1993, when the Keating government aspired to legislate in the spirit of the High Court’s views on indigenous rights, its ability and willingness to do so were enhanced by those 25 years of legislative precedent in which indigenous title was postulated to be communal. As well as passing the Native Title Act in 1993, the Keating government enacted the ATSIC Amendment (Indigenous Land Corporation and Land Fund) Bill in 1994 to create a fund to buy land for those whose native title, in Australian law, has been extinguished for ever. Labor’s Bill stipulated a specifically indigenous communal form of title.

In the Senate debate over this Bill, in October/November 1994, there was a most interesting exchange about the appropriate forms of indigenous property entitlement. Coalition and Green senators protested as needlessly restrictive the Labor government’s insistence on communal title. Beneficiaries of the Indigenous Land Fund, these critics argued, should be able to choose their forms of land title, including the option of individual ownership. The government was trying to deny Land Fund beneficiaries the full range of forms of ownership enjoyed by non-indigenous Australians, the critics protested. Their objections questioned one of the philosophical bases of land rights policies enacted by both Labor and non-Labor governments since the 1960s. A variety of landowning entities have been created by legislation conferring title which is ‘communal’ and ‘inalienable’. The prototype is the land trust legislated as the title holding entity for Northern Territory people in 1976-77. When recommending that legal device, Justice Woodward said that he believed that it would be ‘in harmony with traditional Aboriginal social organization’ (Woodward 1974, p.13).

In 1994 Labor senators defended their Bill in Woodward’s terms. Leading the government’s defence of communal title, Senator Evans summarised three reasons for the
Act to prescribe incorporated communal ownership: it would widen the number of beneficiaries; it would maintain a traditional style of ownership; and it would give a statutory basis for the accountability of beneficiaries. Of the three reasons, it was the second which he chose to emphasise:

It is, of course, the case that Aboriginal people traditionally invariably held a communal form of title – moreover, an inalienable communal form of title. They are totally familiar with operating on a corporate basis. It is totally consistent with Aboriginal custom and tradition so far as land ownership is concerned. (Evans 1994, pp.2492-3)

He was backed up by Senator Kernot: ‘The basis of their society is really communal; it is collective and not individual’ (Kernot 1994, p.2494).

Without getting into a discussion about the pros and cons of Aboriginal land being vested in individual owners, I draw attention to something mystifying about the rhetoric of Evans and Kernot on this occasion. They spoke as if policy and law could be transparent media for indigenous custom. It was as if, at last, Australian governments had come to their cross-cultural senses and were now employing technologies of government which recognised and expressed indigenous custom. In this pretension of governmental transparency, Evans and Kernot echoed the words of Viner – quoted above – when he introduced the Aboriginal Councils and Associations Bill in 1976. I do not want to labour my criticism of these three politicians – among the most liberal we have had in the last quarter of the century. But we should never accept a governmental rhetoric in which the techniques of government are implied not to have their own kinds of effectivity – as if the hallmark of enlightened government was its transparency to society and culture. Nor does my critical stance rest on the opposite supposition – that government is necessarily a harmful imposition on society and culture. In my approach to public policy, to point to the operations of power and to the effectivity of government is not in itself to say anything critical. A critical approach to power and government cannot wish away their very existence. Rather, I take it as the hallmark of critical policy studies that they can illuminate the way different forms of governance implicate this or that constituency of interests.

Different ways of constructing indigenous interests have been at the heart of recent debate about the future of the Aboriginal Land Rights (NT) Act 1976. In August 1998, John Reeves QC delivered to the Howard government his review of the Act. Among his many controversial proposals for the Act’s reform was one which has bearing on the way I have been framing the topic of indigenous citizenship.

Reeves proposed that the land-holding group created by the Act be reconstituted to submerge the rights of ‘traditional owners’ in the rights of all residents of a given area. Currently, the structures of ownership and control of Aboriginal land in the Northern Territory give pride of place to those who are deemed, in Aboriginal customary law, to be the traditional owners. They make up the title-holding legal entity, the Land Trust. The Act defines ‘traditional owner’ in terms of ‘spiritual’ affiliation and responsibilities which are transmitted from generation to generation according to indigenous ideologies of kinship and inheritance. In the implementation of the Act, by the Aboriginal Land
Commissioner and by the land councils, this definition has determined who must be consulted and negotiated with when someone who is not a traditional owner proposes a new land use. Traditional owners also enjoy special entitlements to royalties and other payments that arise from land use agreements. Reeves questioned the pre-eminence of the 'traditional owner' in this legislative regime.

In particular Reeves recommended that the four existing land councils be replaced by 18 regional land councils. It is crucial to his proposal that membership of these new regional bodies would be determined by asking: 'who resides in this region?', rather than 'who owns this region?' Members defined by residence would be the new collective controllers of the land. Through each regional land council, they would make all the decisions about land use which, under the current Act, are made by traditional owners.

To dethrone the traditional owner, Reeves used a number of arguments. His most conspicuous case is ethnographic: that the _Land Rights Act_ has ignored 'the importance of regional populations as the level at which Aboriginal culture is reproduced' (Reeves 1998, p.148). That is, Reeves made the transparency claim: that his proposed structure (valorising regional residence) is a more faithful and transparent mediation of indigenous custom than the current structure (valorising genealogically reckoned spiritual attachment). As well, Reeves argued that if Aboriginal people were to mobilise in politically effective and representative collectives, these collectives had better be based on common residence:

In the present scheme of the Act, traditional Aboriginal owners are groups of Aboriginal people who have common spiritual affiliations to sites on land. These groups are not political, residential or domestic units, or any units of daily life. They reflect a religious organisation that cuts across the residential demographics of Aboriginal regional populations. For this reason, groups of traditional Aboriginal owners are not organised to take any action relevant to the secular interests of Aboriginal people. They are groups based on common rights rather than communities of need. (Reeves 1998, pp.203-4)

Note that Reeves did not confine himself to proposals that (in his view) reflected indigenous norms of political authority (though he believed that such customary considerations favoured his case). He appealed also to a non-indigenous political norm (representativeness), and to the political value which he calls 'autonomy'. That is, he argued that whereas traditional owners are passive holders of rights, dependent on the land councils to consult them and to act on their behalf, regional land councils would combine (residentially defined) land ownership rights and representative political capacity in the one body. He added that legislation should not regulate the political processes within regional land councils (that is, among member/residents). Reeves has also been read as implying another political value in his regional land council proposal: equality of rights among Aboriginal residents. The current Act can be read as _privileging_ 'traditional owners' over mere residents.

The critics of Reeves' regional land council proposal have had to take into account the different kinds of political norms that underpin his arguments. It has been relatively easy
for senior anthropologists to dispute Reeves' reading of the ethnographic record, in particular his attempt to postulate 'the regional population' as a salient unit within Aboriginal customary political tradition (Morphy 1999; Sutton 1999; Williams 1999). It has also been relatively easy to find fault with Reeves' arguments that regional land councils will be more politically effective. He seems to have seriously underestimated the difficulties of resourcing the 18 proposed land councils (Pollack 1999). Reeves' argument that regional land councils would enhance Aborigines' local political autonomy has also been difficult to sustain when placed beside his recommendations about the powers of the proposed Northern Territory Aboriginal Council (Levitus 1999). However, the question of 'equality' among Aboriginal people has not been open to such confident rebuttal.

In his comment on the Reeves Report, Nic Peterson cautioned anthropologist critics of Reeves against assuming that public policy reformers must only answer to ethnographic accounts of what is 'culturally appropriate'. He argued that a statutory land rights regime can and should go beyond 'anthropological appropriateness', in order to honour the (always contestable) demands of 'fairness, justice and equity' and of administrative practicality (Peterson 1999, p.27). However he added that, when anthropologists attest to the importance of traditional owners (as defined by the Act) in Aboriginal political processes, they say something of practical value to policy-makers. Anthropology is relevant to land rights reform in its knowledge of 'the organisation and working of communities, the nature of internal social structures and processes and the impediments within the Aboriginal domain to the functioning of articulating institutions ...'(1999, p.29). Peterson conceded the attractions - 'on the grounds of fairness, justice and equity' - of Reeves' proposed title holding and representative regional institutions, the regional land councils, but he warned Reeves that it is not easy to 'ride over the notion of traditional owner' (1999, p.30).

Peter Sutton, like Peterson, admitted to worries about inequities among Aboriginal people: 'the concentration of wealth in the hands of the few clans on whose immediate estates developments have occurred, when the interests of the regional polity have been downplayed' (Sutton 1999, p.49). Nonetheless his critique of Reeves assumed that 'the Land Rights Act should continue to attempt a reflection of Aboriginal cultural practices, not to impose a radical change which ignores them' (1999, p.49). To postulate as primary one 'level' of Aboriginal sociality - the region, in which owners and residents would be of equal standing - is to ignore the 'complex machinery that coordinates different kinds of persons and groups of different types and sizes, and calls on different sets of people to deal with different kinds and scales of decisions about land as they arise' (1999, p.49). Sutton presented an account of the Aboriginal polity as fundamentally sound because of its many checks and balances. Reeves' regional land councils, complained Sutton, would deny these inter-regional processes the institutional space in which to function. To erode the significance of the local land-owning group would be a mistake, as well, as it 'remains critical to the composition and stability of many of the wider groupings to which people belong' (1999, p.50).
David Martin urged that land rights reform honour the cultural demands of both Aborigines and non-Aborigines. A wider principle of land rights policy, he argued, was that the institutions of land rights must be designed to address simultaneously the principles of two persistently different political domains: the local indigenous and the national non-indigenous. The Act’s current procedures of ‘informed consent’ secure indigenous legitimacy, while non-indigenous legitimacy is assured by institutionalising a professional/managerial culture of accountability within the land councils – accountable both to indigenous constituents (such as a representative elected council) and to the wider public (through financial acquittal and other public tests of professional performance).

In short, the Reeves Report and the critical responses to it richly exemplified two of the contemporary problems of designing the institutional forms which will deliver ‘state-assured private processes of action’ to indigenous land owners. One problem is how to articulate two kinds of right which we non-indigenous Australians are used to distinguishing: the right to own property and the right to participate effectively in processes of government. In the context of the Aboriginal lands of the Northern Territory, these two rights are rather difficult to disentangle, if we respect the norms of the indigenous political domain as described in ethnographies of land ownership. The second problem has to do with the legitimation of these institutionalised capacities. Land rights policies bring together the norms of two different political traditions, combining the questions of what is appropriate to indigenous tradition and what is fair and defensible in terms of liberal political norms. In upholding the rights of traditional owners, were Reeves’ critics disregarding the demands of a competing political norm: equality of political rights among indigenous residents of a given region? The political capacities of the institutions of land rights will continue to be bedevilled by the tensions among the political norms by which they are legitimised.

**INDIGENOUS COMPETENCIES**

My second example of the current shaping of the institutional modes of indigenous participation comes from Victoria and from the domain of service delivery, rather than of land ownership. The Victorian Department of Human Services (VDGHS) has recently issued a five-year strategic plan called Improving Human Services for Victorian Kooris (VDGHS, not dated). Its rationale is that:

> In addressing the special needs of Aboriginal people, governments require an understanding of the Aboriginal community, culture and heritage. Most importantly, cooperation between the Aboriginal community and government is required, to ensure that the community has involvement in making the decisions that affect service delivery, and has a sense of community control. (VDGHS, 'Foreword by Ministers')

Because ‘programs which do not empower indigenous communities will often fail’ the Victorian government now seeks ‘a new approach which involves the Koori community at all levels’ (VDGHS, p.4). Koori organisations are to be involved in two ways: as repre-
sentatives and advocates working within forums constituted by the government, and as service providers. I will focus on the latter.

The Victorian government, across many areas of service delivery, has committed itself to what is known as 'the purchaser/provider split', in which it is possible for the government to contract with a non-government body which has tendered competitively to deliver a publicly mandated service. This neo-liberal device is happily convergent with the emphasis which self-determination has placed on encouraging indigenous Australians to form incorporated bodies. Indeed, when the history of neo-liberal experiments in Australian governance is written, we might find that indigenous self-determination has been a prototypical field of government endeavour. The Victorian government 'recognises a preferred role for indigenous organisations in service delivery' to Kooris (VDGHS, p.28).

However, with that commitment go certain expectations which Koori organisations must fulfil. 'To continue to provide quality services, Koori organisations need to have the skills to meet the challenges and opportunities of the changing environment for service delivery. Training to assist Koori organisations develop these skills will be a key part of the strategy's capacity building activities' (VDGHS, p.8). The 'changing environment of service delivery' consists of two features: 'the greater role for the Regions in planning and purchasing services' and a 'greater focus on outputs and outcomes in the management of purchaser and provider relationships' (VDGHS, p.10).

Koori organisations will be given time to adjust to this transition 'from historical funding to outcomes-driven service purchasing'. They will be given time to develop a 'competitive skills base' (VDGHS, p.20):

Services currently purchased from Koori organisations will be exempted from full tendering, for a period of up to three years. This period of exemption will provide the opportunity for the Department and the Koori community to develop service provider markers within which to tender. This market development activity will include developing the skills, capacity and resource bases needed to enable existing Koori service providers to compete in the tender process. (VDGHS, pp.28-9)

And this implies 'responsibilities' - for the Department to provide training, and for Koori organisations to embrace training and to recruit qualified staff (VDGHS, p.29).

The Victorian government has taken on the task of tutoring each indigenous service delivery organisation to reconsider itself as the site of a 'competitive skills base'. Just what skills are competitive will depend on how the government (the only purchaser, I assume) structures each service 'market'. We cannot assume that every indigenous organisation will find itself contesting a market. The policy makes clear that contestability will not apply unless three conditions are present:

1. Clearly defined service specifications (including those which address cultural issues associated with service provision to Koori communities), outputs, performance indicators and purchasing models in line with the Koori Services Improvement Strategy.
2. Koori and/or culturally appropriate service providers who have reached an agreed skill capacity and resource base to be competitive.

3. Culturally appropriate and acceptable alternative providers.

It is possible to speculate about some ways in which these three conditions will and will not be fulfilled. Take the first condition: it should be no more difficult to develop performance measures in service delivery to Kooris than in respect of any other defined client group. The fulfilment of the second condition will challenge the training capacity and financial liberality of the government and will depend on some commitment to training on the part of Kooris. Presumably one stimulus to that Koori commitment will be that future funding of organisations will depend on it. I do not doubt, however, that there are many Kooris who wish to advance themselves through job-oriented training. Therefore I see no reason why this second condition could not be fulfilled, though I note that the phrase ‘agreed skilled capacity’ implies some process of negotiation between the Victorian government and Koori organisations about what resources and skills are mandatory for a viable Koori organisation. The most interesting and potentially problematic condition of contestability is the third: ‘culturally appropriate and acceptable alternative providers’. The government document implicitly raises the question: need these alternative providers be Kooris?

This is a reasonable question, in the context of a document that highlights the importance of (a) training non-Kooris to be sensitive to Koori history and culture – ‘cross-cultural awareness training’, and (b) recruiting Kooris to the Victorian Public Service. It may be that the most radical ingredient in the ‘Koori services improvement strategy’ is to create a distinction between being Koori (a social identity) and knowing Koori (an accredited skill capacity, possession of which makes one a ‘culturally appropriate’ provider and a competitor in the market). Eventually, it will be possible for Koori organisations to have to tender in competition with non-Koori organisations which have (a) cross-culturally trained their staff and (b) hired some Kooris. The government policy of creating a market for the provision of services to Kooris is thus also a policy to render cultural appropriateness a commodity, an item of cultural capital. Such detaching of competency from identity would be a strange, but not untypical, neo-liberal development of the idea of indigenous citizenship capacities.

CONCLUSION

My purpose in this article has been to highlight a feature of indigenous citizenship: citizenship as ‘state-assured private powers of action’. The exercise of these ‘powers of action’ implies the development of capacities. The history of the politics of indigenous citizenship is an ongoing discussion, mobilisation and justification of different notions of capacity that are inescapably contentious. Who is judging whose capacity to do what? Whose judgments about this are authoritative? And what are the effects of the exercise of that authority?
In applying these questions to a history of indigenous citizenship, it will be possible to go beyond a scenario in which colonists’ authority does battle with the conceptions and actions of the colonised. We must also look for differences among the colonists and among the colonised. Such differences make it more difficult to judge the progress of indigenous Australians away from a condition of being controlled by colonising authority. I think that we will find that, with each change in the institutions through which indigenous Australians are enabled to act effectively, some indigenous Australians are enabled more than others, or enabled differently and even disabled. Such differentiation of impacts complicates evaluative appraisal of such issues as the appropriate design of Northern Territory land councils and land-owning bodies, and whether Koori organisations are being empowered or eclipsed when the Victorian government begins to treat ‘culture’ as a marketable item of cultural capital.

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