

2011 HAMER ORATION **ASSOCIATE PROFESSOR LARISSA BEHRENDT**

UNDER THE RADAR: INDIGENOUS GOVERNANCE

I would like to begin by paying my respects to the Wurundjeri people for their important role as the traditional custodians of this land. I would also like to pay my respects to the Elders of the Kulin nature – both past and present – for their cultural leadership.

It is an honour to be giving the Hamer Oration tonight. David Hamer was a great champion of good governance and also a strong advocate for the arts. And I was inspired by his legacy to look at the interrelatedness of the role of good governance and the importance of cultural life in my observations tonight. And I wanted the tone of this speech to be one that was forward looking and optimistic though I don't want to downplay the enormous challenges.

And in setting that tone, it is important to lay out where I think we need to get to – what is the vision. There is no universal vision. There is more consensus on what the problems are than there is in how to solve them and in what the ultimate goal should be.

I will talk about the tensions in what the solutions are shortly but let me just articulate what I think the vision should be.

I would like to see an Australia where Aboriginal and Torres Strait Islander people have the same opportunities and life chances as all other Australians and in this Australia, Indigenous cultures, experiences and history are seen as central to the Australian story and cultural identity.

The tension between this vision and others is the focus on the role of Indigenous culture. I think the aim of closing the socio-economic disparity between Indigenous and non-Indigenous Australians on measures such as health, housing, education and employment. This agenda – that has attracted the name of Closing the Gap – has been widely embraced and is relatively uncontroversial.

So the agenda – and the vision it works to – as I articulated sees this Close the Gap ambitions matched with a strong and vibrant environment for Indigenous cultures. And it is that aspect of the agenda where there is some disagreement.

The divergence occurs in two ways. Firstly, there is a school of thought that Indigenous culture is part of the problems facing Indigenous people and the second is that, while there are those that feel comfortable with aspects of Indigenous culture, they are less so about wanting to extend meaningful protections to it.

Let me deal with both of these concerns though it is – as an Indigenous person – a strange thing to find one having to continually make arguments as to why Indigenous cultures is valuable.

The proposition that Indigenous culture is part of the problem has increased recently in debates around Indigenous disadvantage driven by the rhetoric behind some of the justifications of the Northern Territory intervention. This narrative asserted that high rates of violence and abuse of children were a direct result of those behaviours being sanctioned by Indigenous people and were an inherent part of Aboriginal culture.

This was assumption has been wrong and it has been damaging. It is wrong because it misunderstands the dynamics of the change on traditional structures, including that of cultural authority. It is wrong because it erroneously asserts that Aboriginal cultures did or do support abuse of women and children and child neglect. It is wrong because the *Little Children are Sacred* report – which was used as the trigger for the Northern Territory intervention – noted that a majority of perpetrator were non-Indigenous. Extensive and expensive investigations by the Australian Federal Police revealed that there were no organised paedophile

rings operating in communities in the Northern Territory and the Minister for Indigenous Affairs who made those allegations had to back away from them.

The “Aboriginal culture is evil” narrative oversimplifies to the point of absurdity the factors that lead to dysfunction in communities and, in fact, does the same with understanding the underlying issues around sexual offending, violent behaviour and substance abuse.

And that is why it is dangerous.

Apart from the stigma this narrative attaches to Indigenous people – particularly men – it misanalyses the source of the problems and this makes it much harder to deal with them effectively. I am in no way denying the seriousness or the complexity of the problems. What I am saying is that if you oversimplify the causes of these significant and intractable problems, you will not be able to effectively address them.

I would also make this point. I draw a distinction between the need to Indigenous cultural practices and the need to keep cultural authority and positive cultural values strong as opposed to the abuse of custom. I am well aware of criminal cases where defendants have argued that their offences were not viewed as seriously under Aboriginal traditional law. In those cases, members of the Aboriginal community furiously countered the assertions about Aboriginal cultural values by the defendant’s legal representatives. Judges were perhaps more willing to accept these defences in the 1970s and 1980s. They are much more reluctant to give them any weight now.

I take the alternative view to that proposition that Indigenous culture is part of the problem.

I believe that if the dynamics of social dysfunction in Aboriginal communities is properly understood it becomes apparent that it is the breakdown of social cohesion and the undermining of old structures – with nothing to replace them – that leads to the most serious social problems.

It is not as simple as saying that the breakdown of traditional community structures leads to social dysfunction but I think there is truth in the assertion that the breakdown of those structures makes it much more difficult for communities to exert positive social controls over their members.

Let me give you an example from my own state of New South Wales. I am currently involved with a research project – in partnership with the Bureau of Crime Statistics and Research – that is comparing Aboriginal communities with high crime rates to those with low crime rates. The research is undertaken with pairs of communities that are relatively close to each other but have differing crime rates.

So far, the study has been conducted in Wilcannia and Menindee, in Bourke and Lightning Ridge and in Kempsey and Gunnedah. I just want to draw one element from the research to date. In the communities that have high crime rates, there is usually a strong system of moral or cultural authority in the community – people make decisions and lead by example and exert a positive influence over the community. I will say more about this shortly.

Not only do I think it is erroneous to simplistically say that culture is part of the problem – there are plenty of examples where it holds a key to the solutions.

There is universal acceptance of the importance of better educating Indigenous children. Aboriginal educationalist Chris Sarra has developed effective programs that engage Indigenous children with school and improve their academic performance. His model focuses on the need to counter the generally low expectations some teachers have of the performance of Aboriginal students and they focus on building the confidence of Indigenous students. Sarra’s programs use strategies that build self-esteem such as teaching children about their culture and making them proud of their identity.

Another example of how culture can be a key part of the solution is the role it plays in bilingual education programs. These programs are structured on a proven educational model that assumes that English is a

second language to children in the classroom. They are taught to read in their own traditional language. Familiarity with letters and phonetics then makes the learning of English much easier.

This might seem like a good common sense approach yet it has huge resistance from governments who simply say “Children need to learn English” and mandate compulsory English in the classrooms. In fact, if competency in English was a major objective, it would seem that bilingual education programs would be the thing you would invest in, not abandon. As an aside, those programs have other added benefits. Teachers need to learn the traditional language and often there is a co-teaching model with the teacher and a member of the local community in the classroom. This builds the relationships between the school and the community and it means that children have another familiar face in the classroom.

Yet, these models – which are resource intensive, I admit – have been dismissed with arguments that teaching Aboriginal children their own culture alienates them from mainstream Australia and impedes their opportunities.

Those arguments fail to appreciate that the whole purpose of bi-lingual education programs is to improve English proficiency and none have been more passionate advocates for these programs than Aboriginal parents who know that their children need to learn English in order to have advantages in life. In the contexts I have just mentioned, there is a narrative in the discourse of Aboriginal disadvantage that demonises Aboriginal culture.

I want to talk about another dynamic between Indigenous culture and the broader Australian community that has its own complexity. On the one hand, Australians are comfortable with some aspects of Aboriginal culture – they embrace the mesmerising beauty of Aboriginal art, they use symbols of this oldest living culture when we showcase internationally things that are uniquely Australian – whether that is tourism campaigns or the opening of the 2000 Olympics.

But while there is a comfort with these cultural displays, there is less interest in giving that culture meaningful protection. It is important to note that there have been important advances in protecting the rights of individual Indigenous artists and that the proposed national cultural policy has a focus on Indigenous arts. But it is in the areas of heritage protection and other cultural protections that there is too little recourse for Indigenous people. In NSW, for example, there is no list kept of Aboriginal cultural sites that have been destroyed after government approval to do so. National heritage legislation is weak. Levels of protection vary from state to state. To again use the example of NSW, there is no cultural or heritage protection legislation but there are some protections in the National Parks and Wildlife legislation. In addition, there are too little resources going into the protection of Indigenous languages and they are dying out at one of the fastest rates in the world despite the concerted attempts to maintain them.

If we value Aboriginal culture, if Australians think the art is great and that we can lure the tourists here with the Indigenous cultural experience that they seem to be so genuinely interested in, then we need to protect it through substantial cultural and heritage rights regimes.

At this point I would like to underline to points that I have argued – firstly, that Indigenous culture is part of the solution not part of the problem and, secondly, there needs to be active and substantial protection of that culture.

I will return to those propositions but I would like to now turn from tensions in the vision we are working towards and look at the tensions in how to move from the current challenges.

I have in what I have discussed so far given some insights into the reason why policies fail. With the failure to support bilingual language programs by dismissively stating that the goal should really be to ‘teach children English’, they are taking a policy approach against what the evidence shows works.

There is quite a bit of evidence about the mechanisms that can successfully improve school attendance and these relate to factors such as improved quality of teaching, a teaching environment in which children feel

welcomed and comfortable and the need for a strong relationship between schools and communities. You can see how bilingual education programs can provide those things.

Government responsiveness to Indigenous issues has often been questioned because investment of money and resources too rarely translates into substantial improvements.

This leads to constant questioning as to why we “throw” so much money at Indigenous issues but still make such small headways on Closing the Gap. In fact, on issues such as over-representation in the criminal justice system, the gap is widening.

There are many reasons but I want to just identify a few that explain the failures.

- There are too many policy approaches fuelled by ideology rather than by the evidence of what works and what doesn't;
- In fact, sometimes policy approaches go directly against the evidence of what works to reduce a problem (as an example, consider the tension between tough on crime legislation that includes homelessness as a reason to deny bail (Indigenous people are over-represented in homelessness figures) and the supposed desire to reduce the number of Indigenous people in custody. Large numbers of the over-representation can be attributed to prisoners on remand.)
- Policy approaches often target crises. There is much less investment in addressing the underlying causes of disadvantage and of social problems. For example, the Northern Territory emergency response targeting problem drinking by imposing alcohol bans but did not allocate any money to programs that deal with substance abuse; it imposed a form compulsory income management but did not allocate any money towards programs that assist with improving financial literacy and while the policy was imposed under the rhetoric of “protecting women and children” and described as having a focus on getting children to school, there was no funding for programs that are proven to improve school attendance.

A report released this week by the NSW Ombudsman Bruce Barbour, titled, *Addressing Aboriginal Disadvantage: the need to do things differently*, was very critical of approaches taken by the state government and those criticisms could be extended equally in most other states. It found that there had been glaring policy and program failures in areas that matter most to Indigenous people, particularly education, employment and child safety.

The interesting thing about the report was that it clearly placed blame on failures to address Indigenous disadvantage on the shoulders of governments and bureaucrats rather than taking a “blame the victim” approach. The report also acknowledged the need for Indigenous people to be more centrally involved with decision-making processes around government engagement.

Burbour had said that “Aboriginal leaders were “tired of seeing valuable resources wasted on poorly targeted ‘off the shelf’ programs and a lack of coordinated planning around funding, design and delivery of critical services of government agencies.”

He went on to say: “It is our view that the uncoordinated funding of ever more services has become a poor substitute for failing to grapple with the more difficult and inter-related challenges associated with child abuse and neglect, youth offending, habitual non-attendance at school, high levels of substance misuse and unemployment in high-need Aboriginal communities in NSW.”

The solution to this, the report argued was greater transparency and in the funding and evaluation of programs and an urgent need to rationalise the array of existing plans and strategies to determine what works and which current initiatives are likely to deliver real benefits.

Naturally. Sounds like common sense.

But it is a sad reflection that not so long ago the language of “shared responsibility” and “mutual obligation” crept in to Indigenous affairs. While the concepts might seem to denote an idea that Indigenous communities and governments should be working together, in practice, the policy approach sought to change the behaviour of Indigenous people through agreements linked to service provision.

In one example, a community in the Northern Territory entered an arrangement under the policy whereby they would ensure all children attended school in return for the establishment of a market garden. Once the initiative got under way, the first thing that became apparent was that there were not enough teachers and classrooms to accommodate all of the children in the community. This revealed where some of the underlying problems which led to poor school attendance – a lack of investment in teachers and educational infrastructure. Poor school attendance was not simply an issue of parental attitudes.

In fact, research has shown that parental attitudes are not the primary reason Indigenous children have poor school attendance rates. The climate of the school, quality of teaching and ability to engage with the curriculum are much greater factors in whether a child will be interested in attending school.

In the case in Wadeye, getting more children physically into the classroom was no guarantee that there was a conducive learning environment.

In addition to these practical problems with the implementation of “shared responsibility” policy approach, analysis of the first \$100 million spent on the program showed that 75% of the money went into administration and the engagement of contractors and only 25% made its way into Aboriginal and Torres Strait Islander communities.

Now, I’m not saying that the failure to resolve intractable issues more effectively in Indigenous communities is the sole fault of governments but I am asserting that the inadequacy of government policy approaches is often under-emphasised or ignored with blame left entirely on communities.

I am going to spend the remainder of my time tonight looking at the building blocks for building that capacity but before I do, I just want to briefly discuss one aspect of the ideological debate that I think have been unhelpful and contradictory if we accept the proposition that there needs to be buy-in from Indigenous communities.

In the 1990s, there was a line of argument that started creeping into Indigenous affairs that “self-determination has failed.”

This argument ran along the lines of the following: A policy of “self-determination” had been implemented by the federal government. A key part of this policy was the establishment of the Aboriginal and Torres Strait Islander Commission (or ATSIC). It was essentially an elected representative body attached to a government department. It became a failed experiment. Therefore, self-determination had been tried and failed.

While the extent to which ATSIC as an administrative body was a failure is much more complex, it is true to say that the body was a public relations failure. It was often blamed for the failure to improve health and education outcomes, for example, even though it had no control over those issues – they remained the responsibility of federal and state and territory governments.

It is also true to say that it is incorrect to describe an administrative arrangement such as ATSIC as the embodiment of self-determination and, equally, it is wrong to link the lack of political and popular support for the body with a failure of the concept of self-determination.

But the rhetoric that self-determination has failed has become increasingly entrenched and accepted.

The danger of the easy acceptance of this assertion that self-determination has failed poses a problem.

All of the evidence of what works in reducing the socio-economic disparity between Indigenous and non-Indigenous people shows that a key factor is the involvement of Indigenous people in the development of policies and the involvement in the design and implementation of programs into their communities. This is an element in the research in Australia and it mirrors the findings in comparable jurisdictions such as Canada, the United States and New Zealand. The central role of Indigenous people as a key factor for success in improving socio-economic positions is particularly strong in the health area.

This has the ring of common sense. There is an inherent advantage in engaging members of the community in a policy – they are well placed to understand community needs and dynamics and to know which approaches might work and which won't. They are able to engage other members of the community with programs and use their networks to ensure that the community engages with programs as they are rolled out. They understand the community dynamics and the politics.

And let me give you a practical example of why I believe this is so. In the study on Menindee and Wilcannia there was a stark difference between community responses to social problems. In Wilcannia – the town with the higher crime rate – there was a despondent reaction to questions about what actions the community had taken to address particular social issues facing the town. Responses included: "There is no point in trying to get a job. Those businesses never employ blacks", "The council never listens to us so there is no point in talking to them", "We don't get on with the school so there was no point."

By contrast in Menindee – a community with a low crime rate and a cohort of senior women who exert a moral authority over the community responses to such questions were quite different. "When the kids weren't coming to school, Auntie Beryl got in the bus and went down and got the kids from the riverbank and took them to the school." "When we had a problem with the paint sniffing, we went to the school and told the principal and we searched the bags so we could deal with the kids."

In those two different responses are a group of people who feel they have no ability to be able to control their circumstances and a group of people who do. And in that second group, they come up with simple yet effective solutions to the problems they face.

And that ability to be able to solve your problems yourself and to feel as though you have the ability to do so is, I would argue, an important form of self-determination.

The assertion that self-determination has failed is not sustainable. It has never been properly implemented as a policy and the assertion that it fails is in direct contradiction to the evidence that you need the increased participation of Indigenous people in policy approaches in order to achieve meaningful results.

I should stress that I don't see the quick abandonment of the concept of self-determination on the basis that it is a failed experiment as being a critique on a particular political party. I think there has been a general bipartisan support for that assertion – and the ground too easily conceded by people who had supported the concept of self-determination even if the policy approach was ineffective - so my critique of those ideologies goes across party lines.

I want to move now to talk more optimistically about solutions. And here I return to the concepts of Indigenous community involvement and capacity building.

Aboriginal disadvantage occurs in a historic context and it is a context that has a long history. At the end of the day, mistrust between government and Indigenous communities is an entrenched barrier.

The best ideas for dealing with intractable problems have invariably come from communities themselves. The bilingual education programs I have described, dry out shelters to stem the impacts of alcohol fuelled violence, breakfast and lunch programs in schools so that children from dysfunctional environments feel

more nurtured within their learning environment – they have all come from the community. Not from bureaucrats sitting in Canberra or the major cities.

And they are most effective because people have understood what the problem was and found a strategy that best fixed it in their own particular circumstance.

This means that there has to be a ground-up approach; not a top down one. And it means that there has to be meaningful engagement with the Indigenous community, not merely tick-the-box consultation.

Advocacy for Aboriginal communities taking on this central role leads us to a critical challenge. It necessarily flows from the proposition that Aboriginal people need to be central to the decisions made about their communities, the development of policies that affect them and the roll out of programs in their communities that you need to have the members of those Aboriginal communities adequately skilled and resourced to play those roles. That is, it requires an investment in capacity building within those communities.

Capacity building is not something that can be achieved overnight. It has three important strands to it:

- improved educational outcomes for Indigenous people;
- meaningful integration into the decision making process;
- further development of skill sets around governance capacity.

Fixing Indigenous educational outcomes so that literacy and numeracy competencies are equal to that of all other Australians is an urgent issue. It requires investment in teacher education and in improving the aspirations of Indigenous children and an increased investment in educational infrastructure. I think this investment is fairly uncontentious so I will move on to the other factors.

Meaningful engagement in decision-making cannot happen without a structure. Communities are amorphous and unwieldy creatures and governments cannot deal with them without an interface. The ATSIC structure provided that interface – a national body with a nation-wide network of regional bodies to more effectively represent the needs of different regions.

Let me give you an example of an institution that has not been a failure – the NSW Aboriginal Land Council. Established in 1983, it has been given much more time to find its feet as a body than ATSIC was given and in the last five years has started to reach its potential.

The NSW land council is an elected body with members representing regions across the state. It has a network of local Aboriginal land councils – elected bodies representing their areas. The land claims process provides an economic resource. Land is held in freehold title so can be kept for its spiritual significance, used for community development such as social housing or community centres or for economic development. A percentage of land taxes collected over a 15 year period were put into a capital fund and the administration of the system is paid for out of that fund now. Currently the system hold over two billion dollars of land and the capital fund is now at over \$700 million. The system itself is the largest representative body in the country. It has over 23,000 members – 1 in 3 Indigenous people in NSW have joined their local land councils.

In the last few years, the NSW Aboriginal land council has established an educational scholarship fund for the children of its members and has joined with the state government to jointly fund a \$120 million infrastructure program to improve housing, water and sewerage on Indigenous reserves. The system provides an easily identifiable point of consultation for state and local governments – the federal government seems to treat it like it doesn't exist.

Now, I'm not advocating this as a one size fits all model but I would say that it is proof of the ability to be able to give some kind of meaningful governance structure to communities that would not otherwise have it.

The flow on effect in having organisational structures such as the NSW Aboriginal Land Council is that it has become a further vehicle for capacity building. It undertakes governance training with all of the members of its land council boards and in the local land councils this is a particularly important process.

It can be guaranteed that many of the people sitting on their local land councils are sitting on other bodies and the governance training they are receiving through the land council system will be transferred to other organisations. It means that in places such as Coonabarabran and Brewarrina where there are few opportunities for adult education, there is a capacity building exercise going on through the development of an important skill set. And there is some appreciation of the need to develop a critical mass of expertise – that it is much more effective to be improving the skills of a group of people as a vehicle for transformation.

And that fact that so few people, even in New South Wales know of the existence, role and potential of the land council system highlights the fact that we too often hear the narrative of failure and dysfunction in Aboriginal communities and too seldom hear the narrative of success even though there are plenty of instances that can be pointed to.

And that leads me to the final point that I would make tonight.

It is easy to feel despondent and overwhelmed by the enormity of the task ahead. But the narrative of disadvantage, the continual failure of policy approaches, the triumph of ideology over evidence-based approaches have all masked the successes in other areas.

Rather than always just reacting to crisis there needs to be greater investment in what is working in Indigenous communities around the country and the insights that brings will provide a better framework for address disadvantage and for building Indigenous community capacity that simply continuing to replicate the same policy failures over and over again.

It's time to bring back and re-embrace the concept of self-determination in the policy arena.