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# RESEARCH DISCUSSION PAPER

## **Indigenous Governance**

The Harvard Project on Native American Economic Development and appropriate principles of governance for Aboriginal Australia

**Patrick Sullivan**

Visiting Research Fellow Indigenous Regional Organisation and Governance, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra

NUMBER 17  
February 2006

AN AIATSIS RESEARCH DISCUSSION PAPER

AIATSIS Research Discussion Paper No. 17

First published in 2006 by the  
Research Section  
Australian Institute of Aboriginal and Torres Strait Islander Studies  
GPO Box 553 Canberra 2601  
AIATSIS Research publications co-ordinator: Graeme K Ward

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NATIONAL LIBRARY OF AUSTRALIA CATALOGUING-IN-PUBLICATION DATA:

Sullivan, Patrick (Patrick John).

Indigenous governance: the Harvard Project on Native American Economic Development and appropriate principles of governance for Aboriginal Australia.

Bibliography.

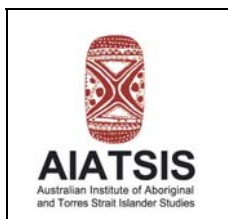
ISBN 0 85575 545 8.

1. Aboriginal Australians - Politics and government. 2. Aboriginal Australians - Economic conditions. 3. Indians - Politics and government. 4. Indians - Economic conditions. I. Harvard University. Harvard Project on American Indian Economic Development. II. Australian Institute of Aboriginal and Torres Straits Islander Studies. III. Title. (Series: Research discussion paper -Australian Institute of Aboriginal and Torres Strait Islander Studies-; no. 17).

323.119915

ISBN 0 85575 545 8

ISSN 1323 – 9422



Research Program

Australian Institute of Aboriginal and Torres Strait  
Islander Studies

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**Patrick Sullivan**

Visiting Research Fellow Indigenous Regional Organisation and Governance, Australian  
Institute of Aboriginal and Torres Strait Islander Studies, Canberra

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## ABSTRACT

It is widely acknowledged that indigenous communities in Australia are in crisis (Dodson 2003; Sutton 2001), and increasingly that this is a crisis of governance. Anthropological analysis of pre-colonial Aboriginal political life has characterised it as 'ordered anarchy' (Hiatt 1998). The introduction of order into anarchy results from the tension between relatedness and autonomy mediated by an ideology of nurturing (Myers 1986). Colonisation of Australia resulted in the coercion of Aboriginal people into settlements - either missions or pastoral enterprises. Since de jure emancipation settlements have been nominally under Aboriginal control (Sullivan 1996). The conundrum for post-colonial public policy in Australia, that this paper addresses, is how to effectively service Aboriginal peoples needs, encourage the good governance that self-determination requires, institute regimes of respect for civil and human rights within these communities and still remain sensitive to the fact of a continuing lively Aboriginal culture informed by pre-colonial forms of sociality. The Harvard Project on Indian Economic Development (US) appears to hold out the hope of a post-colonial indigenised governance attractive to both government and indigenous interests. It proposes that there are three pre-requisites for development in indigenous communities: sovereignty, good institutions (meaning, in this instance, good management), and cultural match (Jorgensen and Taylor 2000; Cornell 2002; Dodson and Smith 2003). This paper takes the Harvard project's prescriptions as problems rather than solutions and asks whether they are reconcilable with Aboriginal political life. Indigenous communities are clearly embedded in post-colonial settler relations in multiple ways (Benhabib 2002; Tully 1995:10-11; Waldron 1992). Authority in indigenous life, as much as in post-colonial administration, is layered, contextual, contested and continuously subject to exegesis such that both the totality of the settler state and the essentialised nature of indigenous groups that confront it are called in question (Martin 2003:2-6). It is not adequate, this paper suggests, to conceive of Aboriginal culture as a set of institutions that can be translated, in one way or another, into effective organisational structures for self-management or commerce. It proposes disentangling Aboriginal cultural processes from effective organisational structures and linking these only through lines of information sharing, and permission-getting, that is by engagement with communal political processes. Added to this is the need for protection of minority and dissident interests by providing guidelines for the acceptable exercise of authority within an Aboriginal domain. This paper looks for ways of meeting three competing aims: effective indigenous governance, respect for indigenous culture, and acknowledgement of the need for human and civil rights within indigenous communities that reflect the fact that they are embedded in a wider sociality.

## 1. Indigenising Post-colonial Governance – the Harvard Principles

### Origins

The Harvard Project on Indian Economic Development has been operating for about 18 years, based in the John F. Kennedy School of Government ([http://www.ksg.harvard.edu/hpaied/res\\_main.htm](http://www.ksg.harvard.edu/hpaied/res_main.htm)). It is associated with the Native Nations Institute, Udall Centre, University of Arizona (<http://www.nni.arizona.edu>). Largely, its work has been to produce quite specific papers on particular Native American communities, or particular questions that arise in these communities, similar to the work of the Centre for Aboriginal Economic Policy Research of The Australian National University. Broadly speaking, the work is concerned with relationships between economic development, governance principles and social wellbeing within indigenous communities. In Australia, the public faces of the Harvard Project are Professor Stephen Cornell, Manley Begay and Neil Sterrit, who have toured several times and presented summaries of their work at indigenous governance conferences<sup>1</sup>. It is these presentations, and not the Harvard project as a whole, that have been influential in Australian indigenous affairs in recent years. It is timely that the basis of Harvard's prescription for Aboriginal advancement receives some scrutiny since it has begun to inform government policy, both federally and at the State level (Mowbray 2005) and at least two research projects are currently attempting independently to verify its findings in the Australian context<sup>2</sup>.

The key findings of the Harvard Project that have caused enthusiasm in Australia are that sovereignty is very important for development on Native American lands, that good governance is very important, and , that culture is very important. The Harvard project proponents tend to summarise this as:

- Sovereignty matters
- Culture matters
- Institutions matter

This paper examines these claims in two ways. The genesis of this formula, which is based on the repeated statement that it reflects substantial hours of empirical research in numerous North American communities, is given some scrutiny. More searchingly, the applicability of these findings, however arrived at, for the Australian case is examined. I raise questions about their internal coherence, about their practicality given our knowledge of Aboriginal traditional governance processes, and about their implications for justice and harmony in Aboriginal settlements.

The three-point formula referred to above is summarised as key research findings <<http://www.ksg.harvard.edu/hpaied/overview.htm> (accessed 28/02/2006)>. It appeared in embryonic form in 1991, was codified in 2000, and continues to re-appear to the present (Cornell et al 2005:4-5; Cornell et al 2004:7; Cornell 2002; Jorgensen and Taylor 2000:2-3; Cornell and Kalt 1991:39-40). In Australia, Dodson and Smith (2003) have taken it up. This rather programmatic mantra, that is both product and brand, sold by and selling the Harvard Project itself, appears first in this particular form in Jorgensen and Taylor (2000:2-3), but traces it's origins at least as far back as Cornell and Kalt's *Where's the Glue* (Cornell and Kalt 1991:39-40) and more in more concrete form in *Reloading the Dice* , published four years from the start of the Harvard Project (1992:2, 64-5 and passim).. When Jorgensen and Taylor distilled this work into the

three-point plan in their 2000 publication they were able to say ‘since then, project Professors, fellows, and graduate students have logged hundreds of person-days on the ground in Indian Country’ consistently leading to these three key findings (Jorgensen and Taylor 2000:1-2). Cornell and Kalt (1992:3) referred to deep analysis of data from 67 reservations, and Jorgensen and Taylor reported on the results of a survey in which more than seventy Indigenous enterprises responded to questions about their management, allowing the authors to make a ‘multiple regression’ analysis. However, neither demonstrates the relationship of the data analysis to the three conclusions reached other than to state that this is their conclusion. The survey reported by Jorgensen and Taylor did not address the three-points, rather it was used to draw the more limited conclusion that enterprises do better where there is no Indigenous political interference (already a finding of Cornell and Kalt in 1991 (1991:39)). Since their paper does not address the Harvard formula in its specifics, the implication that this arises from the survey results is difficult to understand.

The political and economic ideologies underlying the Harvard studies, as well as the methodological procedure that routinely conflates correlation with causality, have been discussed recently by Mowbray (2005). They are not the focus here. The power of the Harvard work is its claim to be the outcome of rigorous empirical work. This claim gains momentum with repetition, but it is difficult to interrogate. The origins of the three-point plan in Jorgensen and Taylor’s paper are rather murky. We are told that the paper itself arises from a joint project with the National Congress of American Indians and Alliance Management Systems (Jorgensen and Taylor 2001:1). Indeed, the outcome of that project may have some uses, though its methodology is unusual. The NCAI project mailed out 300 survey questionnaires to individual Indian entrepreneurs and many more to tribal governments. They had a 15 percent response rate, and the majority of responses were from the entrepreneurs. Entrepreneurs’ responses were probably annulled in the results by applying the criteria for success set by the Executive Council of the NCIA. In all, the project analysed 74 survey forms, scoring them by five criteria for success, which were provided by the NCAI<sup>3</sup>. It found nineteen successful, and interviewed these to arrive at five characteristics (NCIA:77-78). It reported in summary form on the nineteen case studies of successful Indian organisations and found that success depends upon: diversification of markets, providing security for business partners and investors, positive relationships with banks, independent board of directors, and non-traditional (i.e. government or equity) financing NCAI (2001:75). This doesn’t have much to do with sovereignty and culture but does say something, albeit limited, about institutions. Having introduced their paper with this study, Jorgensen and Taylor then refer to the ‘hundreds of person-days’ the Harvard Project has logged ‘on the ground in Indian Country’ (Jorgensen and Taylor 2000:1-2) before introducing their three keys to development as consistent findings.

These three principles are not related to the NCAI study. The claim that sovereignty matters is supported by reference to two sources, one of which is in an academic journal. The claim that culture matters is supported by reference to two unpublished manuscripts by Jorgensen, and three Harvard papers, which I will briefly review here. The claim that institutions matter is unsupported by reference to data but it is argued, reasonably enough, that successful ‘tribal governments’ have good dispute resolution, they separate government from commercial activity, and have effective administration underpinning their legitimacy (Jorgensen and Taylor 2000:3).

The best referenced claim is that culture matters. It ‘is a resource that shores up the strength of government and has concrete impacts upon such bottom line results as forest productivity and housing quality (Jorgensen and Taylor 2000:2) The substantial works

cited in support of this are three Harvard Project papers *Where's the Glue ?* (Cornell and Kalt 1991), *Constitutional Rule* (Cornell and Kalt 1993), and *Heterogeneity* (Cornell and Kalt 1995). I will refer to them sequentially and, to make matters simpler, by this coded form of their title.<sup>4</sup> Reviewing these works, we find that, in '*Where's the Glue*' (Cornell and Kalt 1991), the authors begin with a brief description of four Indian situations – The Crow (unsuccessful), The White Mountain Apache (successful), the Pine Ridge Sioux (unsuccessful), and the Mississippi Choctaw (successful). These are hardly referred to again in the paper, which then concentrates on conclusions from studies of the Salish-Kootenai of Flathead and the people of Cochiti Pueblo (also the subject of their *Heterogeneity* paper – (Cornell and Kalt 1995) and Begay and Cornell's (2003) Australian conference presentation). They also draw on, they tell us, 400 man-days of research in a 'selected sample' of reservations over a decade, producing 225 research papers (Cornell and Kalt 1991:20) as well as analysis of economic data from over 70 tribes (1991:26)<sup>5</sup>. While this sounds impressive, many of the Harvard papers simply restate the findings of previous research. It is questionable, then, whether it has the power of cumulative evidence, or whether it has the status only of the original assertion. In assessing employment and income growth, they find that General Council governance (which may conform most closely to Australian settlement experience) works poorly, and strong-legislature governance performs slightly better than strong chief-executive government, though they have some reservations about the applicability of their sample across all cultural forms (1991:32-33).

In *Constitutional Rule* (Cornell and Kalt 1993) the authors compare the Oglala Sioux, who are generally impoverished, to the White Mountain Apache, who are doing quite well. They find that Sioux social organisation is not well-adapted to the predominant form of governance encouraged by the settler bureaucracy, while that of the Apache is (Cornell and Kalt 1993:32, 42; Begay and Cornell 2003). While they find Sioux contemporary governance 'counterproductive' (Cornell and Kalt 1993:43), they are not forthcoming on what to do about it; although, in *Reloading the Dice*, they suggest small-scale localised manufacturing, retail and service businesses, and tourism might work (Cornell and Kalt 1992:58; also Cornell and Kalt 1991:33). They do not suggest cultural adaptation is an appropriate solution. In the final paper referred to by Jorgensen and Taylor as support for point two of the three-point plan, *Heterogeneity*, Cornell and Kalt (1995:48) concluded that strong community government insulated from politics is required to control 'rent-seeking', a euphemism for corruption. It analyses the cultural basis of strong government in two indigenous cases. It proposes that these two cases are economically successful because of their strong governance institutions even though these are quite divergent, and therefore that the critical factor is that they accord with pre-colonial social organisation. I will return to this point when considering 'cultural match' below.

A critique of the assumptions and conclusions of the Harvard studies appears below; here I am scrutinising the source of the three-point formula now so popular in Australia, and question whether it really is an outcome of, rather than a hypothesis informing, detailed empirical work. The Harvard Project studies are an impressive body of work, but two things are apparent: the link between the conclusions and the data is, at best, not demonstrated, and the conclusions of the papers themselves are considerably more complex than the three-point formula inherited by Australia. The conclusions of its early work were that commercial enterprises should be operated by strong institutions that have a measure of cultural legitimacy, and that shield decision-makers from the demands of their political constituency. They are not concerned with the social justice implications of such strong governments. They do not address the question of how to encourage appropriate political institution that are divorced from strong

enterprise governance, and they are not enlightening about what to do when culture clearly does not match the needs of enterprise – when organisations are either illegitimate or legitimate but unsuccessful. In the early work, there is a tendency to find generalised good-management principles, such as the separation of powers, in the traditional forms of governance of successful Indian enterprises.

In Australia, communal governance tends to occur only for the delivery of municipal services to settlements. There is little indigenous enterprise. Where there is, for example pastoral station operations, there is a tendency for it to be run by a single family, usually with a strong family head. There are, however, Aboriginal functional organisations such as health services, media services and land services. These can have some of the aspects of communal governance rejected by the Harvard studies – a governing council subject to communal special interest pressures, although this varies from case to case. The striking problem for Aboriginal governance is the effective provision of municipal services and the regulation of public order in settlements or over regional networks of settlements. It is for such cases that the Harvard three-point formula is seen as a way forward. I suggest below that this is an inappropriate adaptation of the findings since it confuses governance as political life with governance as good functional management.

Taking the three-points at face value, we can ask: Do they have internal coherence or sense, and do they apply to the delivery of services for indigenous Australia? The three-point formula has been seized upon for application to Australia because, on the indigenous side, it seems to demonstrate that development (which all can agree is a ‘good thing’) proceeds from sovereignty, or relative autonomy. To government, Harvard research promises to make indigenous communities, especially remote communities, good subjects of development by instituting good governance while at the same time protecting ‘culture’. Far from the win-win-win promise that it holds out, the Harvard formula encapsulates the problems that I address here.

The problem is that the Harvard (and contemporary Australian) approaches blend the idea of good governance as organisational management with a different, though related series of processes, governance as political process, which is inherent in practice rather than in organisations or institutions. I suggest, as has David Martin (2003:10-11), that these two aspects of governance should be explicitly de-coupled both for more efficient management and for the greater strength of culture. I suggest, though, that it is also necessary to use a modification of the principle of subsidiarity to allow for the continuation of political practice in communal interaction, where it belongs, and to moderate culture as appropriate for the exercise of civil and human rights. This is a consideration missing from Harvard analyses of cultural match, where blatantly authoritarian and gender-biased institutions pass without critical scrutiny (e.g. Cornell and Kalt 1995:41-47). Consequently, it is possible to argue that functional organisations should put aside concerns about culture. Institutions for the delivery of services, development programs, and policing of basic standards of respectful behaviour should adhere to universal standards of good management first and foremost. Nevertheless, I argue that culturally informed distributions of power and authority existing within indigenous groups should influence organisations from without. There should be institutionalised relations, then, between indigenous political forms at whatever level these are found and functional managing organisations, but there should be no attempt to build these in to these organisations. There is a risk here, of course, that unacceptable, maladapted cultural forms will have influence over persons’ lives as well as their functional organisations, which raises the question of intolerant societies which is so badly dealt with in liberal social theory. It is clear that factionalism leading to internal



disadvantage and oppression is not alien to contemporary Aboriginal settlements. Oppressive practices are sometimes excused as a product of colonialism, and sometimes defended in the name of culture (e.g. Folds 2001). This is a trend that contemporary anthropologists, notably Peter Sutton (2001:1, 145-149); and David Martin (2003), have turned their backs on. Martin (2003:8) wrote:

My own view is that socioeconomic disadvantage, widespread social dysfunction, and fragile, conflict-ridden organisations have certainly resulted in part from the legacy of colonisation, including ongoing exclusion and discrimination. However, the vulnerability of indigenous organisations is exacerbated and reinforced by particular values and practices which indigenous people bring to bear in their participation in them. That is, there may be a contradiction between the requirements for 'effective' formal institutions on the one hand, and the robustness of informal institutions of a particular group or society on the other.

So a third and necessary part of the argument advanced here is that human rights principles based in liberal values, guaranteeing a group's well-being, which are as much desired by indigenous peoples as by their encompassing states, can be accommodated by interventions that are sensitive to the degree to which abuses occur (how widespread they are) and the intensity with which they occur (how severe their consequences are). This is an adaptation of the principle of subsidiarity and deals with liberal rights theory's grappling with the problem of non-liberal societies (e.g. Kymlicka 1995:157-172) simply by a long overdue application of common sense.

## **The principles**

Here I examine whether the principles can be implemented even within their own terms, and at the same time assess their post-colonial credentials. In the next section, which is an analysis of anthropological knowledge of Australian indigenous political life, I will question whether culture in the Australian context could ever be imported into contemporary community governance. Put simply, the argument is: If processes for good governance as understood in contemporary terms exist in indigenous cultural practice there is no need for intervention, nor would we see the dysfunction that has been publicly acknowledged for at least twenty years (e.g. von Sturmer 1982; Sullivan 1986; Rose 1986; Sutton 2001; Dodson 2003). If, however, indigenous political systems are incompatible with mainstream good management, are inappropriate or simply do not engage with good development practice, how can they be acknowledged?

At first glance, the principles are apparently based within a post-colonial thematic that argues for de-colonisation of indigenous peoples and the recognition of indigenous practice in community governance and development (e.g. Marsden 1994; Nicholson 1994; Moreno 2005). In fact, the researchers are also much committed to allowing for free flows of capital into Indigenous communities, utilising the Indigenous labour resources, linking communities to market networks and contesting communalism. It is a measure of their abilities in promoting their work that they manage to meet both of these disparate agendas. In Australia, the Harvard studies are generally interpreted as offering a solution to a widespread concern of post-colonial development: How to implement indigenous governance that is respectful of cultural norms, responsive to local wisdom and at the same time delivers practical outcomes that reassure institutional investors. We must note that the first principle, sovereignty, is not as contentious a term in North America as it is in Australia. The idea that some measure of sovereignty is retained by indigenous nations in North America is commonplace and in some cases is reflected in the law such as the different tax status that some North American Indian communities enjoy. It is reflected also in ownership of resources such as timber, and in

self-governance arrangements in some areas, for instance in the operation of Native American courts. Yet Australians are wary about importing this concept of sovereignty from America into the Australian situation since there is substantial political sensitivity attached to it. This has been evident in the current Australian government's response to the question of self-determination of indigenous peoples during debates over the draft Declaration on the Rights of Indigenous Peoples. 'Sovereignty' in Australia, like 'self-determination', is glossed as 'separatism', another failed policy of the left-socialist past (e.g. Hughes and Warrin 2005). In the current political climate, sovereignty, the word rather than the concept is a back-lash trigger of some intensity (as are 'racism', 'genocide' and cultural rights in general). Where the Harvard work has been used in an Australian context, the word 'sovereignty' has been dropped in favour of other terminologies such as 'political jurisdiction' (Dodson and Smith 2003:9). The Harvard studies in any case are not primarily concerned with the structural relationship that indigenous peoples have with the state. Cornell and Kalt's intention is to address the control that people have over their own lives and the control that they have over the activities that happen in their communities (e.g. Cornell and Kalt 1992:14-15; Cornell 2002:2, 4-5).

What Cornell and Kalt said is simply that, if people have control of decision-making over the activities that are going to happen on their lands, and some control over the benefits of that activity, then they are likely to make much better decisions. The idea of sovereignty as expressing political rights asserted by one group against another, and so control over resources and territory, is as foreign to the Harvard studies as it is to current Australian thinking. Cornell is correct, of course. Where people are asked to make decisions without any real control, they may make extremely irresponsible decisions because of lack of repercussion on the person making the decision; or they make decisions with good will that are nevertheless ill-informed; or decisions may be made by those who just don't care one way or another. This is very common in Australian Aboriginal communities that are continually subjected to 'consultation' about what they think about something that is about to happen, without any control over whether it will happen (or, indeed, whether they think that something else ought to happen). The results of consultation are inconsistent since those affected have no real control over the course of the project or its outcomes.

What the Harvard project found is not surprising: Where people really feel that they are able to have some effect on a proposal, and that the results of their decisions are going to have some long-term effect on themselves, then they will think about it much more seriously and will get better information about it. They probably also tend to take more balanced and more conservative decisions. When that happens over a period of time there is a 'feedback loop' of experience, where decision-makers learn from their last decision and use that experience to make the next one. They get better and better at understanding how to make good decisions. What Cornell and his co-researchers propose is that, if external operators want to get good, balanced and productive decisions out of Aboriginal communities, good for the external players as much as the community itself, then they have to relinquish much external control to the communities (Cornell and Kalt 1992:14-15; Begay and Kalt 2002:3-4; Cornell and Kalt 1998:29-30). Clearly, that message goes down very well among indigenous groups in Australia.

There is another reason that the Harvard project theorists tend to take a simple and instrumental interpretation of the term sovereignty. They are not concerned with political relations (although they have clear political sympathies that tend to construct communities as largely self-referring and discrete nationalities, a multicultural perspective recently criticised by Benhabib (2002) which I address below with reference

to Kymlicka (1995, 2001)). They are also not primarily concerned with the existence of significant commercial resources. Where they depart quite radically from other development studies is in the identification of governance processes as crucial to development, not the ownership of resources with commercial value (Cornell and Kalt 1998:4-5). This is an interesting corrective to development thinking, but can be overstated, particularly in the Australian situation. It is worthwhile to reflect on what the project was about at the outset. It is called the 'Harvard Project on Indian Economic Development' because it was a project primarily about how to get good commercial developments to happen on Indian lands. Such developments should benefit the communities on those lands, addressing some of the very pressing needs of poverty, and also take some of the strain off the state in meeting needs through welfare. It is important to understand where the Harvard project researchers began from when addressing good governance because it explains their conflation of governance as management, with governance as political life. Their approach to good governance is founded in standard business management principles. To attract beneficial investment to Indian lands, risk must be controlled (Cornell and Kalt 1992:26). Where there is poor governance, there is high risk. Investment either is not attracted, or, where it is, then the investors will want to see a much greater return from this more risky environment. If a community puts in place good processes of governance, it will see the converse. It will attract more investors, those that found it too risky in the first place. Also, investors can be persuaded to take less of a return because they can be assured that their investment project is less likely to fall over and cause them to lose everything. As well, they can be assured that it will go on for a longer period of time so they can put in place better plans and not be rapacious. This is what the Harvard project originally aimed to encourage: Reduce risk by good governance and attract investment to indigenous lands (Cornell and Kalt 1991; 1992; 1998). The existence of commercial resources is at best secondary, and possibly irrelevant, in the Harvard conception.

This raises two difficulties for applicability to Australian remote communities. The first of these is simply that it is difficult to raise any community's capacity to be self-governing unless it has a clear idea of what it is governing for. Good processes cannot be encouraged in the abstract; they must be constructed in concrete activities of development, maintenance and servicing. Secondly, it is, in fact, relevant that Aboriginal lands have been returned under various legislative programmes of the last three decades largely where these lands are unused by non-indigenous interests and have little or no productive potential. The same is true of the few cases, such as in Arnhem Land, where Aboriginal peoples have managed to retain their original lands since colonisation. Taking into account the level of need, the cost of development because of location, the difficulty of multifactorial development (everything depends on everything else, because everything is at such a low base) there is not much potential for commercial activities of such significant scale that they will lift the levels of material well-being to something approaching the general Australian standard. Admittedly, this can change over time as new opportunities arise. Recently, there has been a big rise of opportunity in tourism, for instance, that was not evident a decade ago, and the potential for marketing indigenous art has also expanded enormously. Even in 'old' industries like mineral resource extraction, there can be new technologies for exploration and production that can make previously unattractive areas prospective. Commercial opportunities are not absolute but are relative to other developments. In general, though, it is the case that the reason that there are still large numbers of indigenous persons in any particular place across the country is because so far nobody else has wanted it. The corollary is that the involvement of the state in Aboriginal development has always been high.

Taking this into account, Cornell and Kalt go one step further, and this is where the Harvard approach is particularly questionable for Australia. Harvard principles assume, without much examination, that just the same benefits from reducing risk for commercial development also flow to government interventions (Cornell and Kalt 1992:61-63; Cornell 2002:9; Begay and Kalt 2002:4-6)<sup>6</sup>. Does reducing risk for government encourage it to put more money into a community or regional area? If there is good governance in a community, can its leaders go to government and say, 'give us a program here in an area of need', and be confident that government will? At the least, will its officials positively discriminate in relation to another group not operating within the same kind of governance framework? Clearly, the answer is – no. Government has different principles of rationality to those at work in business. Quite often it will not put its resources into groups that are well-organised and perhaps could make good use of them for a range of internal policy reasons, for instance the fact that the group seems to be managing well in comparison with others. The corollary is that government has to address locales of glaring need that its personnel may be well aware are socially dysfunctional. The governance of liberal democracies is firmly founded in the rhetoric of equitable distribution of benefits across a region or throughout the country. Where commercial models are used, these are presented as simply a more efficient way of implementing this principle – though of course there may be considerable scepticism about this. In Aboriginal affairs, the establishment of equity usually requires bureaucratic intervention. Favouritism, where it occurs, may have more to do with indigenous ability to manipulate government than the inherent worth of a project. Non-productive non-commercial skills at manipulating government policy flow-ons have been encouraged through decades of welfare interventions. The Harvard project's arguments are not convincing when it spreads itself out from its original area of concentration, in commercial development, to applicability across the board to every kind of development activity in indigenous communities.

The third point that the Harvard studies stress is that culture matters (Jorgensen and Taylor 2000:2; Begay and Kalt 2002:3). Development requires not only a measure of self-determination/control and good-governance structures, but also that these good-governance structures match with the culture of a community that is the development target. The concept of 'cultural match' has become the current mantra in many areas of remote Australia<sup>7</sup>. The terminology is problematic. When we investigate what it is that the Harvard project is actually suggesting, we find firstly that its researchers are not suggesting importing traditional forms of activity into modern organisations (Begay and Kalt 2002:3). Yet this is the interpretation put upon cultural match by Australian development agencies and those community workers involved in facilitating community governance organisations. Neil Sterritt, an indigenous Canadian associated with the Harvard project, is one such facilitator in his own country, yet his approach to good governance is quite standard public affairs administration good practice (Sterritt 2003). The Harvard studies overall are concerned with transparency, accountability, the ability of the membership to recall the leadership, keeping good records, and similar basic matters. Similarly, the indigenous American, Manley Begay, who regularly tours with Cornell and Sterritt, explains that cultural match is not concerned with tradition so much as the principle of legitimacy (Begay and Cornell 2003). Clearly, this is why the Harvard project is as attractive to government as it is to indigenous political interests. It offers a way to insist on standard governance practice in Aboriginal communities, and to do so in the name of culture and autonomy without, so far, addressing the contradictions inherent in this approach. Cultural match is a problematic response to every researcher's experience of indigenous voices – that development processes 'need to follow our culture'. This is not unique to Australia, but is a refrain of post-colonial development everywhere (e.g. Marsden 1994; Nicholson 1994; Moreno 2005). The

message is strong, motivating the need to build it into the Harvard model. There is an obvious problem: purely traditional practices cannot be built-in to the kinds of governance structures that Harvard promotes because they are obviously quite distinct ways of doing things adapted to other ways of life at another time. If traditional practice already had those good-governance principles, good governance for the contemporary world would not be an issue in indigenous communities. Yet, if traditional practices are not compatible with modern good governance principles, how much can adaptation occur and still produce ‘cultural match’?

The question can be first posed as ‘On which side should adaptation occur?’. Clearly, there is not much room for compromise on the non-indigenous side in principle, because good governance is, apparently, identifiable, and anything else is bad governance. How much can bad governance be tolerated in the name of cultural match and still adhere to risk-reducing development principles? The answer, in the Australian context, is – not much. As detailed below, cultural match as interpreted in Australia can lead both to bad governance and an inherently oppressive reductive codification of a complex culture. The Harvard project scholars, on the other hand, avoid these difficulties in the fine print of their model where they stipulate that, far from importing traditional cultural forms, cultural match simply means having some form of culturally sanctioned legitimacy. In this way, they side-step an important problem in their work – what to do if culture does not match; what if, indeed, as Martin and Sutton and others have argued, culture is the problem? The argument seems to be that, in traditional functional societies, culture legitimated the forms of governance, and therefore anything that legitimates can stand in for culture where culture itself is clearly maladaptive or does not exist in pre-colonial form. Legitimacy is the way out, so the idea of legitimacy itself needs some interrogation.

Legitimacy is one thing; cultural match, or the attempt to find cultural match, as it has been interpreted in Australia is another. Legitimacy is a good deal more flexible as a principle. It could be said, for instance, that the pastoral station owners and the non-indigenous stockmen in the pastoral lands of three decades ago had a degree of legitimacy in indigenous eyes, at least in the running of the pastoral station. Similarly, the missionaries had some legitimacy in ordering life on the missions. Though neither pastoralists nor missionaries had legitimacy beyond these areas. Legitimacy is contextual. Where an ability to assert power is legitimate in one context or in one area of activity, it can be completely inappropriate in another. It also can vary over time. Legitimacy can be withdrawn. It becomes even more slippery when we ask ‘legitimacy in whose eyes?’ An organisation may be legitimate to one part of a group and may be a completely spurious authority in the cultural expectations of another part of the group. The foundations of legitimacy, what is legitimate at any one time, and what it is legitimate to do, require some complex analysis to move beyond the basic requirement that an organisation ‘have legitimacy’.

Legitimacy is the underpinning of cultural match, at least in the Harvard Project writings. What we get in Australia is another thing altogether. It is the idea of cultural match which looks for some pre-existing form of organisation, institution, political authority or distribution of power, and then attempts to import the reflection of this into the developmental or service delivery organisation. At the same time, these functional organisations that run settlements or regions become the bearers of the relative autonomy promised by this model because of their apparent reflection of this political structure. The development organisation then stands in place of the social group that is its target and subject. There are considerable problems with this misreading of the Harvard project. It is something that is done, with the best of intentions, because

indigenous peoples do say, 'We want this organisation to be in keeping with our culture, our way of life, the things that are important to us'. Development facilitators charged with constructing these organisations in consultation with 'the community' (the tautology is evident) take a mechanical mix-and-match approach that is inherently un-anthropological. It is an approach that asks 'How can we take bits of that and put it in here?' This is of particular concern currently, because it is now apparently going on with all the authority of the prestigious Harvard project's cultural match behind it.<sup>8</sup>

I must now take an extended detour into our current knowledge of Aboriginal political life in order to establish two things: First, Aboriginal culture is not constituted in such a way that it can be reflected in effective modern organisations in any deep sense (although congenial symbolism and toleration of an informal culture within the organisation may be another matter). Second, to do so is an ill-considered act of modernisation that potentially does violence both to continuing cultural practice and to principles of good governance. I will return to these points.

## **2. The Basis for Authority and Group Governance in Aboriginal Culture**

### **Clans and tribes as political formations**

This section is a review of Aboriginal authority systems, governance processes and structures as anthropologists have understood them. It begins with Radcliffe-Brown who, in the 1930s, considered that he had discovered a precursor of modern state/territory relations, the exercise of 'dominion' in what he called the Aboriginal 'horde' (Radcliffe-Brown 1934-5:288). This was a small group of about 30 to 100 people (Radcliffe-Brown 1940:xix Even in his own writings, his understanding of what that term meant varied from time to time (Hiatt 1996:21-2). Sometimes he conflated it with the 'clan', which can be glossed as an extended family related by blood ties. Sometimes it means that group and the people who have married into that group, the affines, and sometimes it means a wider group, the extended family, the affines and other people that are attached to the group for various contingent reasons. As we know, Aboriginal society was, and remains, highly mobile, and any one group at any one time includes people that are not directly related to each other, either by blood or by marriage. They may have ceremonial ties to the land, deep knowledge of its mythology, or simply be contingently dislodged and adopted into a group for reasons of charity. If the group so formed is the fundamental unit for the operation of authority in Aboriginal society, clearly that has implications for the contemporary governance of indigenous communities. The existence of small groups of this type implies continual relation with other small groups, which change as membership changes, such that the conceptual cohesiveness of the over-arching polity is problematic (Sullivan 1998). Australian indigenous communities (whether we mean by this residential settlements or socialities) are made up of lots of small groups whose memberships overlap, are negotiable, contextual and vary over time. This is not a good basis for settlement or regional governance. Yet if we examine anthropological concepts of larger Aboriginal groups, it is still not possible to describe them as polities.

In the early years of Australian anthropology, about the turn of the century, various terminologies were used for large groups, including the terminology of 'nations' (e.g. by Daisy Bates – White 1985). At a slightly lower level, the terminology of 'tribes' was used. In those early years there was no real investigation of what was meant by these terms, nor was there any investigation of how they mapped out onto actual groups on

the land, because the field studies had only just begun. It was initially with the work of Davidson (1938) and then, with much more detail and scope, Tindale, that the identification of 'tribes' began in Australia. Tindale began field studies in 1938–1939. He initially published on those field studies in 1940 but it was not until 1974 that he produced his *Aboriginal Tribes of Australia* – with maps of Aboriginal Australia showing boundaries between the various tribal groups (Tindale 1940, 1974). It is interesting, to go back to what Tindale said in his introduction to his 1974 work, bearing in mind that it is the culmination of this period of work from 1938 to 1974.

First, he enters a discussion on the meaning of the term 'tribe' based on dictionary definitions and an entry in the *Encyclopaedia Britannica*. His view at that time was that, however we look at it, the tribe as it operates in Australia is not the same as this international literature leads us to expect. It is not the same sort of a tribe as has apparently been observed elsewhere. He suggested that we should either accept that the term 'tribe' in Australia must be used in a special sense, or it would be appropriate to adopt an indigenous Australian term for 'tribe', to call it by the name that it is given in Australia. The difficulty is that there is no term for tribe (Tindale 1974:32-3). Tindale (1974:30) wrote that '... at the limit of political organization in Australia there is the tribe, the largest [social unit] in which a man can readily share in the full life of the community, imparting his thoughts to others whom he meets with a feeling that he is among his own kind'. Later, he is more precise (Tindale 1974:33):

... in this work we consider the 'tribe' as the normally endogamous unit most commonly recognised in Australia, generally known as occupying a given territory, speaking mutually intelligible dialects, having a common kinship system, and sharing the performance of ceremonial rites of interest to them all.

Let's take these points one by one. It is likely that Tindale's individual, feeling at home in his community, does not meet with all members of the community during his lifetime – it can be composed of up to 1000 individuals and be widely dispersed (1974:31, 33). Tindale (1974:33) did think that, in rare circumstances, the whole tribe would meet together, but that such large gatherings would typically be composed of people of many 'tribal' groups, and would be missing some congregating at that period with others elsewhere (Berndt 1959). While he wrote that the group is 'normally endogamous' he also estimated that 14 percent of marriages were 'intertribal' (1974:32), and elsewhere discussed cases where intertribal marriages were 'common', thus establishing 'cross-tribal kinship links' (Tindale 1974:34) that were instrumental in preventing wide-spread conflict. So the 'common kinship system' establishing his tribe is also shared by those outside the tribe. Similarly, while the tribe was also characterised by the ability of its people to speak mutually intelligible dialects, this is an attribute of tribal membership not a defining characteristic of the tribe since 'there does not have to be a language barrier to mark a tribal boundary' (1974:32). So different tribes may speak the same language. More will be said on language use below; here we need to note that Tindale did not deal with the multilingualism common to Aboriginal Australia. Finally, the tribe's members share ceremonial rights. Again, however, they do not share all known rites with each other and do share rites with other tribes.

Apart from sharing in ceremony, it is quite clear that the tribe's members did not act together in a concerted manner. Nor did it have any kind of central authority, however diffuse. Although Tindale considered that 'hordal units and occasionally even the larger ones here called tribes, are under the dominance ... of some individual or individuals' he qualified this by recognising that 'they have little or no real authority' (1974:36). Tindale's work has ensured that named Aboriginal groups in Australia are now indelibly mapped onto the landscape. Even so, we certainly don't have, from the

point of view of a political analysis, a tribal structure. It is hard to say, in fact, that we have a social group in any sense at all. This is particularly true of the more arid regions, as Berndt (1959) in his seminal analysis of the tribe in the Western Desert concluded. Berndt found that the concept was not useful. Contemporary anthropology has sided with Berndt, finding that 'tribe' is not a useful concept in any area, despite the fact that Tindale published later, had some dialogue with Berndt, and tried to reinstate it.

Berndt (1959) provided us with a much more fluid notion than 'tribe' to designate the widest social group. He simply called this a 'society'; giving a sense of some of the complexities that he had identified, particularly in the Western Desert region, Berndt (1959:105) wrote:

The significance of this wider unit rests primarily on the degree of interaction taking place among its members. Traditionally, those who occupy (not necessarily own) contiguous stretches of country would more probably be found coming together for seasonal meetings, and contacts between them would be stronger than with those further away. But this nucleus, by no means fixed since wandering was the norm, would consist of members of different local groups, different hordes and different dialect units. We cannot speak of it as a kin group, although relationships between members included in it would be articulated in kin terms. Further, representatives of more distant local groups and hordes might be present: the occasional coming together of those who are for the greater part of the year living apart, visits from areas relatively far away, are a notable feature of such gatherings. It is those who meet regularly and consistently, even if intermittently - and are closely involved in reciprocal duties and obligations - who make up the widest functionally significant group.

About this 'widest functionally significant group' he says 'it is more rewarding to speak of Western Desert societies, rather than ambiguously of tribes' (1959:105).

Following Berndt's critique, the term 'tribe' increasingly dropped out of use in Australian anthropology, to the extent that Australian anthropologists nowadays avoid the term 'tribe' altogether, although in popular discourse it is much more common. Among indigenous groups themselves the term 'tribe' is also frequently used. When they use it, however, they may be referring to a variety of arrangements that are not consistent with what Tindale meant by the tribe, or with what an anthropologist elsewhere would mean by it. The terminology that has consistently replaced it is the 'language group'. This term has been translated, in a way that doesn't have any relation to the development of thought in this area, onto Tindale's tribal map itself. So now when we look at Tindale's 'tribal' map – the groups that he was insistent were tribes and the map that he produced to describe tribes – it is frequently referred to as a map of the linguistic groups of Australia. It is not this either, since language use and language domain are not isomorphic, and the delineation of a language domain is itself problematic, as I discuss below. It is not difficult to discern in Tindale's description of the characteristics of a tribe the unexamined importation of a European ideology of 'nation', and language domain too submits to the trope 'nation'.<sup>9</sup>

### **The language group as a substitute for tribe**

If the linguistic group properly reflected a national identity, which is the coming together of history, descent, territoriality, shared language and symbols, it would solve the problem of the tribe, but it does none of these things. The linguistic group (a problematic term in itself, which is interrogated below) does not, any more than the tribe, show an institutional structure. It does nothing as a collectivity. There are no office-holders, nor consistent offices and institutions that exist apart from the particular individuals that hold them from time to time. It has no more empirical status than that of



the tribe. It does offer the appearance of some sort of solidity, because after all a language can be analysed using empirical tools more easily than the more ambiguous notion of social relations, and a conclusion can be drawn that 'this language is spoken here'. Or so it appears. Looking more closely, that appearance itself also dissolves. It can happen that people who speak what a linguist would identify as a single language (in terms of its grammatical structure etc.) are not easily intelligible to each other, because of dialectal shift. The people on the outer edges of the group speak dialects that are significantly different to each other. Yet, they are members of the same language group, from an apparently objective and empirical stance. Conversely, linguists often follow local convention and refer to distinct neighbouring languages which are really dialects of the same language (McGregor 1988:1).

On the other hand, those on the outer reaches of this linguistic group (though even the terminology of centre and periphery is questioned by the approach followed here) may well find that they communicate much better with others who habitually speak a different language – sometimes a radically different language. They do so partly because the distinct languages quite commonly share a large proportion of vocabulary, even though the two languages have different grammatical structures, and partly also because the speakers are bilingual. Indeed, highly mobile peoples habitually speak other languages. So mutual intelligibility among those who are apparently members of different linguistic groups can be greater than among the members of the same linguistic group. This is a truly nomadic, and not simply trans-humant or travelling culture, where persons form into groups at certain periods and split up into other groups at other periods, and then form yet other groups. They use territory in a highly opportunistic manner (Peterson 1986). At any one time within this domain of a particular language, there are those who are spending their lives and using the land as of right who do not speak that language as their first, natal or paternal language, it may not be the language spoken among family members, and it often is not the language of culturally significant ceremony.

Yet the idea of a language group does have some resonance in many Aboriginal groups' understandings of themselves. Very often, the idea of the language is inscribed in the landscape through mythology, and the language itself is seen to be coexistent with the creation of the landscape in the creative period. Linguistic origin myths are fairly common across the country, though here we need to bear in mind another important caveat. The concept of language as presently understood is of quite recent historical origin, it is one of the indices of modernity. In the past, not only in Aboriginal Australia, people were aware only that they adopted certain ways of speaking for certain other people, in certain locations and for certain purposes, and these tended necessarily to blend and to switch. Language origin myths typically record that primal beings decreed or bequeathed a particular manner of speaking at a particular location. This indicates where the central domain of a language is and perhaps where some of its boundary points ideally are, it does not describe the actual extent of language area since the myth describes the tracks and activities of ancestor beings. These do not replicate an ideology of territoriality familiar to those of European background. Further, the knowledge is held in folklore and subject to considerable dispute, exegesis and a necessary ambiguity. It is not simple, then, to determine in an objective-empirical sense 'this is where that particular language is spoken'. The area is, in fact, where many different languages are spoken, spoken continually, spoken habitually, spoken as of right. The only thing that distinguishes it is that there is an indigenous ideology that says this is the *domain* of a particular language, a domain with imprecise boundaries that does not impart to its inhabitants membership of a functional social grouping.

## Ordering anarchy through autonomy, relatedness and nurturing

Increasingly struggling to apply simple social structuralism to Aboriginal political life, the anthropologists of the late 1950s and '60s were led to develop other characterisations of what holds together Aboriginal societies. Lauriston Sharp (cited in Hiatt, 1986:4-5), for instance, called Aborigines a 'people without politics' because, according to him, kinship determined their relationship to each other – there was a perfect balance between a person's kinship obligations to others and those persons' reciprocal obligations. That introduced a structural balance in the group and across groups which meant that politics and formal institutions of power and authority were unnecessary (Hiatt 1986:4-5). Meggitt developed a similar formulation, in which he thought that myth operated in much the same way, that it was something that people had absorbed so much into their understandings of their selves in the world that there was no need to formalise it and to have any other set of institutions that regulated people (Hiatt 1986:5-6). These conceptions themselves came under criticism, not least from Berndt, who pointed out that, in fact, kinship obligation doesn't operate so precisely, it is a good deal more flexible and contextual, and there are many areas of social life that it doesn't regulate. Hiatt (1986:6) himself questioned the power of myth to replace social regulation and procedures of governance.

These arguments are discussed in Hiatt's approachable and insightful summary work on Aboriginal politics, the Wentworth Lecture of 1984, called *Aboriginal Political Life* (1986). Hiatt analyses these arguments in characteristic lucid fashion and comes to the conclusion that the best he can say is that authority and power was regulated in Aboriginal society in a system of 'ordered anarchy'. It is hardly a satisfying formulation for practical contemporary governance, but it is a particularly apt one. It certainly tends to describe the communities of the remoter regions (e.g. Folds 2001). Myers' work on Pintupi social life was published in the same year as Hiatt's lecture, and it gives some understanding of what puts the order into ordered anarchy. Myers (1986) gives us a description of a dynamic tension between two organising principles in Aboriginal social life: on the one hand, the concept of autonomy, and on the other, that of relatedness.

There is a very strong ethic of autonomy in Aboriginal groups that allows for the dissent of an individual or of a small group. This is referred to also by Hiatt, who cites the observations of John Eyre, published in 1845 (Hiatt 1986:1). The ethic of autonomy is clearly related to the ability of individuals, both men and women, to physically reproduce themselves without being dependent on anybody else, at least as adults. Coupled with this is a very limited technology of coercion. Related to the ethic of autonomy is the understanding, which is also very strong among Aboriginal groups, that people are not responsible for each other in day-to-day activity and decisions. This is a characteristic I have observed in my own work with Aborigines, and I consider it to be generally true. In general, Aboriginal adults don't have a sense of personal responsibility for what other people do. Others are themselves in charge of what they do. Nevertheless, while not being responsible, a group, or certain kin, may nevertheless be counted culpable. This is a reversal of European expectations where people closely related are expected to moderate the actions of each other, but not ultimately to be held culpable for another's behaviour. However, Aboriginal society is not highly individualistic or atomistic because of this, since this is only one pole of an individual's relationship to the group. The other pole, as Myers (1986) explains very well, is the equally strong concept of relatedness.

This discussion so far has gone to the individual command of the means for physical reproduction of people, subsistence, which allows for considerable autonomy. There is also the necessity for social reproduction, whereby individuals reproduce

themselves as particular kinds of persons, members of particular groups, with particular knowledge that allows them to understand the world and the way it works, and what is safe and what is dangerous. That kind of knowledge, and the sense of belonging to a community, brings in the relatedness principle and the communal expectation that Myers also identified, of mutual nurturing. He described the need not only to nurture the land, the knowledge of the land and the spirits of the land as represented through myths and through ceremonies and rituals, but also the need to nurture each other through the generations. It is the responsibility of the people with knowledge to pass it on over a period of time and to bring up younger people in their tradition.

It is in the tension between those two principles, relatedness and autonomy, that we can see the order being instituted in this ordered anarchy that Hiatt (1986) identified. However, these are not easy principles to appropriate for an organisational structure required to run a settlement community or enterprise, and certainly will not encourage commercial development. It is not surprising, then, that there has been little attempt to reach back into anthropological discourse for understandings of how good governance in contemporary Aboriginal communities might be encouraged. In my view, satisfactory answers simply are not there. Sharp considered, and Hiatt agreed, that inappropriate concepts had 'seeped into and seriously rigidified much of the discussion of Australian Aboriginal social structure'. These were concepts such as 'chief', 'headman', 'council of elders', and 'gerontocracy' (Sharp cited by Hiatt 1986:4), concepts that we encounter once more in the process of indigenising contemporary organisations.

This discussion of Aboriginal political organisation will have demonstrated that it is not productive to force non-indigenous concepts such as 'clan', 'tribe', 'language group', 'extended family', 'moiety' or 'the Elders' into duty as governance units for contemporary purposes. Yet clearly, Aboriginal peoples do have systems of law, governance norms and processes for the regulation of communal relations. Leaving these in the Indigenous domain, and linking them to functional organisations through consultative processes, which I have suggested is a fruitful alternative to 'culturally matched' organisations, leads us into the realm of recognition of Aboriginal customary law. This is a developed field of enquiry in itself which cannot be adequately dealt with here. Nevertheless, raising customary law as a problem is necessary in order to deal with an essential topic for this discussion – the relationship of cultural norms to universal standards of civil and human rights. Custom and customary law are often confused. Custom may sanction behaviour that is abhorrent and/or illegal in wider Australian terms. Customary law may involve means of arriving at adjudications and modes of punishment that similarly offend liberal values. Liberal minority rights theorists struggle with the need for tolerance of intolerance and passivity in the face of violence.

### **3. Governance, Management, Cultural Appropriateness, Civil and Human Rights**

#### **Tolerating intolerant societies, Kymlicka and Tully**

Aboriginal political life is an extreme example of an enduring problem in post-colonial administration, which I want to attempt some progress on here. The failure of development in indigenous communities is commonly attributed to a lack of attention to local knowledge, including local forms of communal organisation and the distribution of authority (Marsden 1994; Nicholson 1994; see also the debate over Agrawal's comments on indigenous knowledge in the *Indigenous Knowledge and Development*

Monitor.)<sup>10</sup>. Yet for interventions such as those proposed by the Harvard school, and in Australia implemented by the Office of the Registrar of Aboriginal Corporations, certain standards for efficient administration are irreducible. Among these are accountability to the membership/client base, responsiveness to the Board/government, transparency of decision-making, equitable distribution of benefits, fairness in the application of sanctions, processes for review and appeal, clarity of functions within the organisation and disciplinary procedures to see that these are carried out, and effective use of available talents for both planning and implementation. These elements (the list is not exhaustive) establish the environment of effective management. It is true that even non-indigenous agencies operate with informal systems embedded within the formal structure, and these informal systems are often at variance with these apparent norms (Wright 1994:17-20). Yet to totally resile from these principles is to risk collapse, and indigenous peoples more than most require good and efficient management. Clean environments, well-maintained housing, adequate roads, good power- and water-supplies, the policing of public order, these things that most Australians take for granted, are missing in indigenous settlements in Australia and frequently in indigenous communities the world over. The community suffers as a consequence.

The Harvard studies are not unsympathetic to this point of view. However, we differ on a fundamental point. Where Harvard researchers find strong institutions of governance, they are typically only concerned with identifying how these relate to culturally legitimate pre-colonial forms of social organisation. They side-step at this point the difficulty that liberal democracies have in dealing with illiberal regimes, and the considerable North American literature devoted to this problem, exemplified by the differing emphasis of two leading theorists, Will Kymlicka (1995; 2001) and James Tully (1995). In Australia there are few, perhaps no, strong traditionally legitimated forms of Indigenous governance. The considerable literature on recognition of cultural rights, and the difficulty that liberal democracies have in dealing with these presents Australia with different problems. Here the issues are the need to support, re-establish or reinforce traditional forms of authority in Aboriginal communities to deal with the widespread social malaise referred to above. Counter to this, there is a need also, identified as much by Indigenous voices as by liberal observers, to adhere to international standards – for instance of gender equity, children’s rights, the right to free speech and freedom of movement, as well more generalised rights such as the right to live in a safe and stable social environment. Clearly, Aboriginal systems of authority developed under very different conditions to those that they find themselves in today, and finding the balance between cultural right and civil rights is difficult. It is a problem that the liberal rights theorist Will Kymlicka claims to have solved. I want to pay some attention to this claim here, and also to the rather more sophisticated approach of James Tully, before attempting a way out of both the problem of cultural match/effective organisations and the related problems of culture, politics and civil rights.

In a similar manner to the Harvard studies, Kymlicka (2001:209) reconstituted nationalism, minority nationalism, as a public good by which social order is established and through which freedom is exercised. The liberal tradition in general has much to answer for in promulgating the idea that liberal values are best realised by nations, ideally constituted as States or in State-like forms of governance within States. Kymlicka argues within liberal discourse for the recognition of the rights of minorities, and thus has to grapple with the need to defend a hermetic view of culture as the appropriate vehicle for the expression of rights. He proves unsatisfactory, then, in dealing with the problem of diversity within and between minority groups and the possibility of minorities themselves reproducing inequities by the application of illiberal

values. The right of minorities to be self-governing can be seen in two aspects which, though acknowledged, are routinely confused in Kymlicka's work. Rights arising from the nature of the relations a minority's members have among themselves, their 'culture' in shorthand, are one thing. Rights that arise from the fact of their existence as a group, constituted separately from and in distinction to others, are another thing altogether. Kymlicka (1995:35) assumes that both are susceptible to the same form of liberal analysis. But the second of these is the nationalist fallacy. A group does not automatically have a right to autonomy simply because it exists. This is simply the liberal construction of the autonomous choice-making individual writ large - it is no coincidence that minority groups are seen as organic. Also, this conferring of rights on a definable group is sociologically naïve. The nature of groups has been wrongly imagined.

As Benhabib (2002:4), herself a liberal minority rights theorist, writes:

Whether conservative or progressive, such attempts [to accord separatism to cultural groups] share faulty epistemic premises: (1) that cultures are clearly delineated wholes; (2) that cultures are congruent with population groups and that a non-controversial description of the culture of a human group is possible; and (3) that even if cultures and groups do not stand in one-to-one correspondence, even if there is more than one culture within a human group and more than one group that may possess the same cultural traits, this poses no important problems for politics or policy.

This Benhabib calls the 'reductionist sociology of culture'. This view of culture, nation and rights to statehood is relatively new in human history; it is a product of modernism (Anderson 1991; Geary 2003; Hale 1993:68).<sup>11</sup> It reached a particular point of crisis in 1919 when the Ottoman and Austro/Hungarian empires finally collapsed, and the old diplomacy of rights of conquest with little regard to the ethnicity of populations was superseded by the new philosophy of the self-determination of peoples. Margaret McMillan's analysis of the mode of thinking about rights at the Paris Peace Conference in 1919 is relevant to this discussion because its problems beset us still, not only in the uneasy ethnic states it has bequeathed us in Europe and the post-colonial and post-socialist world, but also in the limitations of its mode of thought. McMillan shows how the Supreme Council of Wilson, Clemenceau, Lloyd-George and Orlando struggled to draw boundaries around territories offering a natural homeland to ethnically defined peoples. They roundly failed because (1) the peoples themselves were dispersed and embedded one within another. The resulting lines on maps cut off those who felt related, related those who had little in common, and stranded substantial minorities in States that were hostile to them; (2) claims of historical right and ethnogenesis were not only suspect and inherently contestable (were they to be based on religion, language, custom? In what degrees?). They were essentially arbitrary and applied inconsistently; (4) the ethnic principle could require the abandonment of a people to corrupt regimes; (5) the twin requirements of a territory with geographic features for defence against attack, and the natural resources for a viable economy, were seldom compatible with the ethnic principle. It is a testament to the power of this principle in the modern period that these leaders and their experts ploughed ahead in the face of these difficulties even to the neglect of more traditional desires such as reparations and the enjoyment of the spoils of war. It is important for us because it reflects quite starkly the problems that confront us in crafting a just relationship with embedded non-State peoples in settler States such as Australia, as a comparison of the situation of Europe in 1919 and my description of Aboriginal group formation above would show. Let me return to point 4 above, the abandonment of a people to corrupt or intolerant regimes, since this was the subject of much hand-ringing by Kymlicka.

Kymlicka is not concerned about group formation. Groups are a given. Instead he engages in debate with other branches of liberal theory about why minorities should have rights vis-a-vis the states that they are embedded in. Much of his argument tends to stipulate that groups have rights simply because they exist. Where he digs deeper he finds that freedom can only be exercised through membership of cultural collectivities, what he calls societal cultures, because this is the basis of identity. Societal cultures are distinct and bounded entities through which each member constitutes himself/herself and without which they would not have the conceptual and psycho-spiritual tools to operationalise their rights (Kymlicka 1995:18; 2001:21-22, 53-5, 209-10). Necessarily, then, Kymlicka rediscovers nationalism at sub-State levels and is led to defend it as the operation of a universal vernacular politics that is inherently more democratic than enjoying rights through mainstream processes of the state (Kymlicka 2001:209-10). He is aware that this view of hermetic cultural systems is contested, but he is uninterested in addressing it. Kymlicka (2001:22) writes:

Critics of liberal culturalism have raised many objections to this entire line of argument [that freedom is exercised through identity-forming membership of a societal culture]. Some deny that we can intelligibly distinguish or individuate 'culture' or 'cultural groups'; others deny that we can make sense of the claim that individuals are 'members' of cultures; yet others say that even if [we] can make sense of the claim that individuals are 'members' of distinct cultures, we have no reason to assume that the well-being or freedom of the individual is tied in any way with the flourishing of the culture.

Kymlicka's (2001:22) reply, which leads on directly from this quote, is:

... these are important objections, but I think they can be answered. In any event, they have not yet succeeded in dampening enthusiasm for liberal culturalism, which has quickly developed into the consensus position amongst liberals working in this field.

This sleight-of-hand, in which an important problem is skirted as having already been solved, is typical of Kymlicka's work. It recognises an argument, purports to have dealt with it but side-steps and falls back to another task altogether, which is an internal discourse within liberalism, concluding with a tautology that people who think like this (liberals working in this field) think like this (the consensus position).

He uses this technique to dismiss challenges to his culture concept and also to address the question of the rights of intolerant societies. Stating that fundamental liberal values must prevail, and acknowledging this opens up a contradiction in the absolute recognition of minority rights that challenges minority views of their rights, Kymlicka (1995:153) states:

... given these limitations and qualifications, some defenders of minority rights may think that reconciling minority rights with liberalism is a Pyrrhic victory. To find room for minority rights within liberal theory, they might say, requires qualifying these rights in such a way that they no longer correspond to the real aims of minority groups.... If members of a minority lose the ability to enforce religious orthodoxy or traditional gender roles, have they not lost part of their *raison d'etre* for maintaining themselves as a distinct society?

Here is his answer: 'These are difficult questions, and have given rise to important conflicts, not only between liberals and non-liberals, but also within liberalism itself. For tolerance is a fundamental liberal value' (Kymlicka 1995:154). And again (1995:155):

To be sure, there are important practical and moral limits on the extent to which liberal states can impose liberal values on cultural groups, particularly national minorities, which I discuss below. But there are also real conflicts between liberal principles and the demands of non-liberal groups, and we need to face these conflicts openly.

The ‘discussion below’ to which he refers, which leads on from these comments, concerns the concept of tolerance in liberal theory and his contention that it is not counterpoised to the other liberal good – commitment to autonomy – but is dependent on it. His conclusion is that the state must guarantee civil rights to the members of minority cultures, and that the task of liberal theory is to investigate which minority rights claims are consistent with these principles, but that liberalism does not accord the state the right to impose these principles (Kymlicka 1995:164-5).

We could ask, then, how can the state guarantee rights? The answer is unsatisfactory (Kymlicka 1995:167-8):

Relations between majority and minority nations in a multinational state should be determined by peaceful negotiation, not force (as with international relations). This means searching for some basis of agreement. The most secure basis would be agreement on fundamental principles. But if two national groups do not share basic principles, they will have to rely on some other basis of accommodation, such as a *modus vivendi*.

Even this pragmatism is tempered by the right to intervene in ‘gross violations’. Although ‘the exact point at which intervention in the internal affairs of a national minority is warranted is unclear’, guidance is given by reference to the severity of the violation, the degree of consensus on restricting rights within the community, the ability of dissenters to leave,<sup>12</sup> and the existence of historical agreements with the minority (Kymlicka 1995:169-70). Of course, these separate pronouncements, though side-by-side, tend to contradict, or at best qualify, each other, leading Kymlicka again to say it is ‘very complicated’, could require a book of its own (not yet forthcoming), and to retreat again to his primary purpose, which is ‘to figure out what liberalism’s fundamental principles are’ (1995:171). While he considers that ‘it is important not to prejudge the illiberal nature of a particular minority culture’ (1995:171), he does not ‘mean to deny the extent of illiberal practices in some cultures’ (1995:172). Ultimately, all he is able to offer is that this is a profound challenge to a liberal theory of minority rights, liberals need to think more deeply about how to change ‘societal cultures’ towards an embrace of liberal principles, and, in his last sentence on the topic, that ‘dismissing the idea of self-government of national minorities will not make that problem go away’ (1995:172).

Here he is wrong. Dismissing the idea of national rights for minorities, distasteful though it may be, does make the problem go away, at least in the medium term. Ten years of Liberal coalition government in Australia testifies to this. On the other hand, simply stating and restating the problem does not lead to a resolution of it. This is the line of reasoning that has attracted the criticism of Castoriades (1997:30), who lampoons the ‘... euphoric schizophrenia of the intellectual Boy Scouts of the past few decades, who preach both the rights of man *and* the idea that there is a radical difference among cultures that forbids us from making any value judgments about other cultures’; he goes on to ask ‘how could one then judge (and, should the occasion arise, oppose) Nazi or Stalinist culture, the regimes of Pinochet, Mengistu, and Khomeini? Are these not different, incomparable, equally interesting historical “structures”?’.

Kymlicka’s problem arises from the view of cultures as hermetic, self-referring, self-replicating, and therefore attracting rights similar to national rights within the boundaries of larger states. In his recent work he more explicitly embraced this nationalism. While raising the question of breach of universal rights again, and dismissing it by saying ‘I do not want to enter into that debate, and the issues of cultural relativism that it raises. We are all familiar with that debate, and I have little to add to it’ Kymlicka (2001:90) concludes that the issues will be fewer once we have dealt with the issues of ethnocultural justice. This is to assert that first a minority must be accorded

rights, then only can we decide whether we have recognised a monster. This is disturbing since it is in this book that he reverts to his argument that freedom can only be expressed through membership of a particular culture, as if the problems he has failed to address have already been dealt with (Kymlicka 2001:209), leading to the embrace of ethno-nationalism with a clean conscience (2001:210):

For this reason, the foundational liberal commitment to individual freedom can be extended to generate a commitment to the ongoing viability and flourishing of societal cultures. And in multination states, this leads to the rise of minority nationalisms – i.e. to the demand for language rights and self-government powers. These rights and powers ensure that national minorities are able to sustain and develop their societal cultures into the indefinite future.

He goes further (2001:213):

Not only is ethno-nationalism the pre-requisite of freedom due to the human need to assert freedom within a cultural framework, it is also the foundation of democratic participation in the modern world. This is because ‘democracy within national/linguistic units is more genuinely participatory than at higher levels that cut across language lines ... . Put simply, democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue. As a general rule, it is only elites who have fluency with more than one language ... . Moreover, political communication has a large ritualistic component, and these ritualized forms of communication are typically language-specific.

This is wrong. Typically, political relations have been pursued at the widest levels by people speaking a trans-ethnic *lingua franca* as well as various local languages. Kymlicka’s view that participatory democracy can only occur at the level of ethnicity, and this is because it is only here that people can communicate, not only fails to problematise ethnicity, but also ignores the potential for participation at several levels at once, and the fact that people typically speak many tongues (dialects, registers, stylistic and cultural codings as well as distinct languages). Again his argument is self-referring – vernacular politics is politics in the vernacular – and undemonstrated – this is the only true democracy.

These arguments dangerously encourage conflict between ethnically defined political collectivities and oppression within these collectivities. Is there an approach to cultural rights that does not rely on ethnic nationalism and its concurrent dangers? In contrast to Kymlicka, this is the point at which the constitutional theorist, James Tully, begins. Though sensitive to liberal arguments, Tully explicitly divorces himself from that tradition, which he situates with other suspect and oppressive traditions used to ‘rig the rules’, or societal constitutions, in favour of colonial powers. Tully (1995:10) couches his work in the tragedy of contemporary ethnic and sectarian conflict, even though the burden of his argument throughout his *Strange Multiplicity* concerns accommodation between indigenous and non-indigenous peoples. This may be a tactical error in gaining the attention to his work that it deserves because of the immediacy of the problems it addresses. It is correct, nevertheless, because it identifies indigenous issues as exemplifiers of wider processes of identity conflict and accommodation. Unusually for a constitutional lawyer, he situates his work in contemporary anthropology, as well as philosophy, drawing on Carrithers (and elsewhere Geertz and others 1995:10,101.) for his (Tully 1995:10-11):

... view of cultures as overlapping, interactive and internally negotiated ... .  
Constitutionalism in an age of diversity is yet more difficult than this. Not only do cultures overlap geographically and come in a variety of types. Cultures are also densely inter-dependent in their formation and identity. They exist in complex historical processes of interaction with other cultures. The modern age is intercultural rather than



multi-cultural ... . Citizens are members of more than one dynamic culture and the experience of 'crossing' cultures is normal activity.

There is a tendency in Tully's work to adopt the common contemporary view that we currently live in a uniquely diverse age, yet his method belies this, and in fact supports the emerging view that cultural diversity is a condition of human history (in contradiction of the Malinowskian view that culture is necessarily stable and culture change anomalous).<sup>13</sup> Tully's method is to find in the European discourse of constitutionalism what he calls, using Said's term, a 'contrapuntal ensemble' of ancient dissent (Tully 1995:100). To do this he first sets up the terms of *modern* constitutionalism which his work critiqued, and which he contrasts to *contemporary* constitutionalism, which he advocates and situates in a dissenter's discourse, drawing upon dissenting jurists and the common law. Tully proposes that contemporary constitutionalism is founded on three conventions inherent in this dissenting tradition: Consent, continuity and mutual recognition (Tully 1995:116-129). Whether in its nationalist, liberal or communitarian guise he finds common features in modern constitutionalism which, in summary, mean that it arrogates to itself not only the role of defining the society constituted, but also the language through which its members can constitute themselves and express their rights. It is through this language trick that oppression masquerades as freedom. Here Tully (1995:105) draws on Wittgenstein to understand 'the craving for generality' that has its origins in part in 'our preoccupation with the method of science'. In other words, it is an artefact of modernity.

What emerges from Tully's critique of modern constitutionalism is an alternative in which actors are self-identifying and adhering into groups in a multiplicity of ways that arise not from ascription but out of the nature of their interrelatedness. Groups so constituted are not isomorphic one with another in any sense. They are diverse in their histories, concerns, tasks, effectivity, coherence and stability over time and context, and their members are mobile, potentially taking up positions in various collectivities. Such groupings are not to be unduly interrogated as to their composition and legitimacy. They present themselves; a discourse takes place; understandings are reached. Inequity and oppression arise from forcing such freely-constituted associations to constitute themselves in terms dictated by the modern state. Implicit in this approach is that agreements may *not* be reached, understandings may remain elusive, actors may continue to pass each other by. Lacking the certainty of structure, such an approach may appear to be unworkable, but it is in fact supremely pragmatic; it produces change only in what is pressing and contingent and, ideally, only as far as is required. In practice, these are the circumstances in which many non-state nations and sub-nationalities find themselves today. Dealing with them as such, recognising this as an authentic expression of human sociality with an ancient lineage, and refraining from imposing structure that does violence to their nature - this is Tully's argument for contemporary constitutionalism.

However, recognising and communicating with existing authority systems in the community at large does not mean taking a complacent view of the operation of 'traditional' culture and its effects, in modern settings, on the well-being of sub-groups within the society. Partnerships for indigenous development proceed from an acceptance of indigenous rights, whether these are conceived of as equal to those of other citizens or as arising from cultural uniqueness. Yet it is not acceptable that developmental rights be implemented at the expense of other human and civil rights. Autonomy and recognition of culturally-derived authority can be reconciled with respect for civil and human rights by developing the concept of cultural subsidiarity.

## **Cultural subsidiarity and civil and human rights**

The principle of subsidiarity was developed for the governance of Catholic religious communities. It seeks to allocate to central authorities decisions that transcend local particularities, yet at the same time guarantee to regions the right to set policies that reflect regional priorities (Cass 1992). Delors (1998) summarises the principle as ‘never entrust to a bigger unit anything that is best done by a smaller one’. It is also often stated as being the principle of decision making as close to the level of the individual citizen as is appropriate for the circumstances. Recently, in the context of the European Union, it means that higher authorities should make decisions or implement programmes where it is more efficient or appropriate for them to do so than a multitude of lower authorities (Cass 1992). I would add to this, for our purposes here, not only the need for a concept of appropriateness of governing activity to the level of the governed, but also appropriateness of the type of intervention for the seriousness of the activity to be governed. I will elaborate on this point here, since I think that it has the potential to get us out of many relativist difficulties.

It seems to me that the principle of subsidiarity is admirably pragmatic. It rejects the assumption inherent to philosophical enquiry and particularly inhibiting in political philosophy that ‘one size fits all’. That is, if, after your enquiries, a position is found to be right, it must be carried through to the point where it meets, inevitably, its own practical absurdity. There are many spheres of life where liberal-minded people agree the rote application of liberal principles is oppressive: in many family matters, between lovers, in the realm of art, and in religious experience, to mention only a few. Cultural subsidiarity requires leadership outside of functional organisations, which sets both the desired goals of the people and sets limits to the scope of autonomous action.

To take a concrete example, Ralph Folds (2001) has usefully described how a remote Aboriginal community can subvert development interventions to its own culturally determined ends. It uses housing, sanitary equipment, vehicles, even schools in ways that replicate traditional processes in a modern setting. The result to non-indigenous eyes is evident squalor and malaise, yet Folds convincingly uncovers the vibrant social system underlying, even actively producing, and this apparent dysfunction. This is a useful interpretation, but it is only half the story. At the same time as wishing to subvert, transform, appropriate and reinterpret non-indigenous interventions for development in their community, the people also wish for incompatible outcomes. They do want their children to be educated in non-indigenous skills such as English; they do want good health for themselves and their families; they do not complacently accept family violence and rampant substance abuse; they would prefer that their equipment functioned better for longer. In short, they require two incompatible versions of the good life. It is the role of leadership, communally recognised authority, and not of development organisations, to bring sense to those who demand the impossible, determine how far non-developmental aims will be acceptable, and limit the realms within which non-liberal, non-western forms of activity will go unregulated. Recognition of subsidiarity is useful here. It allows for relative autonomy within wider governance systems, and differs from the concept of devolution in that it recognises rights inherently lying at the local level, rather than conceded from above.

This leads me back to my argument for an alternative approach to Indigenous governance in Australia to that proposed by the Harvard studies. If Tully is right, it is both oppressive to impose non-indigenous constitutions on indigenous collectivities, and unnecessary. They should be recognised, treated with, but remain incorporated in their own distinct ways that need no translation into a corporate structure. This is very similar to the argument I would advance for a de-coupling of the corporate governance

of functional organisations from the political expression of a deep and complex range of cultural processes. My conclusion echoes that of David Martin (2003:10; also Mantziaris and Martin 2000:126-8) who similarly came to the view that de-coupling cultural processes from efficient organisational structures is required both to do justice to the Aboriginal polity and to provide effective services. Martin (2003:10) wrote:

The more that attempts are made to reflect the complexities and subtleties of the values and practices of indigenous people in formal corporate structures and processes – for example, regarding such matters as authority and decision-making, or the various forms of the typically labile indigenous groupings and sub-groupings – the more there is the risk that over time the formal corporate structures and processes will supplant the informal indigenous ones – a process of the ‘juridification’ of social relations. While ... the engagement of indigenous and non-indigenous people can best be understood in intercultural terms, ‘juridification’ takes this a step further, raising the problem of the underlying social relations being distorted or dominated by the legally enforceable expression of the same relations.

And (2003:11):

Arguments for ‘cultural appropriateness’ should not displace the overriding need for organisational structures and management processes to facilitate strategic engagement with the general society. Equally, arguments for indigenous ‘self-determination’ should not displace the necessity for competent management. It is typically assumed that the indigenisation of organisations equates to self-determination ... . However, I suggest that because such organisations do not lie within a distinct and autonomous indigenous realm but rather within a contested intercultural field, we are provided with a position from which to question this assumption.

The preceding discussion indicates how I have also arrived at these views. Martin’s observations broadly inform the discussion that follows. Two inadequate approaches to the conundrum of recognising local culture and yet encouraging efficient administration are often attempted. In the first, an informal organisational culture is allowed to develop that is said to be more in keeping with indigenous norms. As a result the organisation is deemed more culturally congenial and therefore, it is implied, better able to respond to local needs and implement programmes in a culturally sensitive manner. This condemns indigenous peoples to incompetent implementation of communal programs, and often results in a trade-off of benefit to the organisation’s personnel at the expense of their fellows. It is ripe for the abuse of power. It may be preferable, however, to the second approach, which is to import the most easily assimilable, superficial and apparent elements of an imputed indigenous social structure into the organisational structure in the name of indigenous knowledge or, in Harvard project terminology, ‘cultural match’. These solutions include the relatively benign adoption of the nomenclature of local groups, places or traditions for communal organisations, and authority figures for functional positions. When they institute such roles as headman, clan leader, tribal boss, the ubiquitous ‘elder’, moiety or sub-section relations, gender and age divisions, sometimes using their vernacular expression, they become more of a liability for the membership itself. This approach has two problems. First, it institutionalises ineffective governance in a much more inflexible way than allowing an informal culture of the organisation to adapt to local conditions. Second, it codifies a simplified westernised modernist understanding of a complex multilayered, contextual, mutable and inherently negotiable traditional practice. So it robs the people of their culture in the name of their culture while at the same time institutionalising bad management. Third, by concentrating on the organisation at the expense of the society, problems of social malaise, poor leadership, oppression and exploitation in the society itself are swept under the carpet.

How are these shortcomings to be avoided? First, we need to distinguish between management and governance. Second, we need to find a set of principles for dealing with the relation between the two. Third, we need to include the principles for a balance between cultural autonomy and adherence to universal values of human and civil rights that I have outlined here.

#### **4. Recognising and Encouraging Indigenous Civil Society**

I have argued that there is a distinction to be made between representative structures for functional management and functional structures constrained by representative voices from the constituency at large. The second of these implies the existence of a civil society with own institutions and means of being heard. This is taken for granted and therefore largely invisible in non-indigenous politics. This may be the reason that it is underdeveloped in non-indigenous interventions for indigenous governance. Instead there is a concentration on more obvious representative mechanisms – the membership of the board or council, the criteria for general membership, and, following this model, the intrusive and unwieldy reliance on one sole means of doing the business of representation – the deliberative meeting. This final section discusses how both representation of members by boards, and the institution of the meeting, though inescapable, suffer from strict limitations in Aboriginal societies and are not adequate in themselves either for efficient management or satisfactory political expression.

Management is about the efficient implementation of programs, while governance concerns the distribution of authority throughout a community, which itself involves leadership in establishing community purposes and effectively nurturing community well-being. The first of these requires an organisation, the second proceeds from a political system.<sup>14</sup> As well, both need to be integrated with each other, but they should not, as they have in Australia, be conflated. There can be no resiling from the requirements of effective management. To accept less is oppressive. The question is: What is the best relationship between an efficient management and program delivery structure and indigenous governance arrangements? The analysis above of Aboriginal political life, and the comments that follow it, both indicate that having a functional organisation ‘stand for’ the community is unworkable. No manipulation of structure, process, and membership categories can replicate indigenous governance. Nor is it necessary if adequate communication, consent-getting and consensus over realms of autonomy are established within the wider system of governance. This is the important distinction I wish to make here. Attention needs to turn away from structure – how an organisation can be representative, to process – how an organisation can build effective channels of communication with the wider governance environment of a community. This is what Martin (2003:11) refers to as a robust relationship between the organisation and its clients or constituents, though this relationship requires more than the ‘internal accountability’ of an organisation to its membership/client base (Martin and Finlayson 1996), but is more a relationship of information sharing, mediation and facilitation, allowing for voices of advocacy and fostering or supporting a lively civic life which should, as Martin suggests, allow for the intervention of custom.

This distinction is covered in some detail in Mantziaris and Martin’s (2000) work on native title corporations. They distinguish two types of organizations, the participatory and the representative (in fact they distinguish four, but I am simplifying). The terms are somewhat confusing as by ‘participatory’ – they mean that the community is required to be represented by the occupation of positions within the organization – either as members or through having their factional representatives on

the board. By 'representative' they mean an organization that stands in for the community. It has need neither of membership nor of special interests on the board since it works on behalf of the community, it represents them. It can only do this if there are effective means of communication, information sharing, and permission-getting established with the community that it represents. This aspect is essential for this model to work, but is not well developed in Martin and Mantziaris' otherwise ground-breaking proposal. But it has led to Martin's later identification of the need for a 'robust' relationship between the representative organisation and those it represents (Mantziaris and Martin 2000).

Many indigenous persons themselves challenge the idea that a representative person, or representative structure, somehow stands for the community. There are two ways of looking at the question of representativeness. In one model it is enough to have a fair and equitable means of choosing representatives, who then make decisions and participate with other interests on behalf of those who have chosen them. The other is to continually involve the larger group in consultations, find out its needs as these change from time to time, and act only when a large proportion of the group has endorsed the activity. The first approach only requires a fair and representative structure for appointing (and recalling) representatives. It is appropriate in non-indigenous cultures. It may be favoured by government precisely because it is the system that has selected and supports them. The second approach, I suggest, is more appropriate to the normal operation of Indigenous cultures. It is also more effective in the long run since certainty for external interests forming agreements with the group cannot be achieved in any other way. The representative organisation lacks formal power to enforce its decisions among its membership, so decisions have to be, in a sense, organic. Unfortunately, many Aboriginal organisations find themselves under pressure to perform both kinds of representation. When outside interests require quick decisions they tend to demand that the representatives arrive at one on their own. When the decision goes against the interest of an outside party it very often happens that the representatives are told to prove that they have adequately consulted the community, and that the community understands the issues. The threat of Aboriginal dissent among members thus shadows negotiations with external interests. If this were not destabilising enough, non-indigenous parties also reserve the right to go directly to the community, bypassing representatives if they feel this to be in their best interest. The indigenous community itself, in keeping with Aboriginal cultural expectations, also reserves the right not to be represented or to dissent. However, the result is frequently the uncertainty that non-Aboriginal interests complain of and declare they seek to avoid.

Aboriginal people usually insist that they be given representation in areas of concern to them by the appointment of Aboriginal persons to boards and committees or by employing them in functional positions. They rightly feel that someone of Aboriginal descent and experience will have a more intuitive understanding of Aboriginal issues and commitment to their resolution than a non-Aboriginal person. There is a symbolic aspect to this also. It is a gesture that tells them Aborigines are being taken seriously. Very few, however, would suggest that each Aboriginal person is capable of understanding or speaking for all; indeed most would reject this idea strongly. Yet, once Aboriginal demands for representation are met, non-Aboriginal interests very frequently act as if this person somehow represents the essence of all such people, although when this idea is examined its absurdity is apparent. Sometimes more sensible assumptions can underlie it. Aboriginal representatives on boards and committees are assumed at least to move among the Aboriginal community, hear the voices of the people, and therefore act as a special sort of channel for those voices. Even this is rarely the case. Many are restricted to their own social circle of family and friends, and only understand

majority opinion on the most fundamental and obtrusive of issues in very broad terms. Yet they are often asked to respond to issues at the level of fine detail and without much understanding of any large scale consequences. Even if, in fact, such individuals are finely tuned to the opinions of their constituency, it remains a haphazard and inefficient way of dealing with this important function.

The issue of information is very important here. Representatives, and the community they represent, need adequate information. It is a futile exercise to appoint Aboriginal persons to boards and committees and not to give them the means of understanding the implications of the issues they are to contribute to. Similarly, even a properly representative individual, who may be rubbing shoulders with the people on a daily basis and absorbing their opinions, can gain little from them if their opinions are based on false, confused or fragmentary information. The non-Aboriginal way of dealing with this problem, which has been imported into Aboriginal communities over the last twenty years, is to hold a meeting.

Meetings have some usefulness in Aboriginal culture but they are approached very differently to those of non-Aboriginal culture. First, there is the question of attendance. The people who can attend a meeting during working hours are generally those who are unemployed or who are employed by service organisations that will view the meeting as part of work. This does not encourage a representative grouping. It is also true that many who are unemployed nevertheless have important business to attend to and are not available full-time to attend an endless round of meetings. Meetings in the evening or at weekends are unpopular. The exception are meetings organised in bush settings where persons are free to move around, do other activities such as fishing, and children are more easily looked after. However, these meetings are very demanding on the organisers and are not suitable for continuous consultation and decision making over a long period of time.

Other factors limit attendance. The location of the meeting will determine who comes. Some people may feel uncomfortable outside their own areas or be in dispute with the people in control of the venue, or simply feel that the venue will attract people who are unsympathetic to them. A very common response of those who feel that their point of view will be challenged is simply not to attend a meeting. Or they may attend, observe and say nothing. Similar Aboriginal protocols also make the meeting more difficult to conduct than a non-Aboriginal meeting. Young persons and women frequently feel that they are not able to talk in front of older men, although they may know more about the subject. Similarly, those who do talk at length are often not those who carry any authority in the community, although they may be well educated and think that they should have some influence.

Taking these factors into account, the meeting is of limited usefulness. It can be used to give information but is not an adequate basis for taking decisions based on community wishes. The effective transmission of information is of course dependent on the communicator having the correct information in the first place, all of it, and in a form that can be easily verbally summarised and understood by the listeners. A good deal of effort usually goes into ensuring that this is the case, but this often results in meetings that are no more than lectures by experts rather than genuine community interactions. At best, decisions can only usually be expected about processes rather than actual actions. That is to say, the assembled people may agree that they are happy that things proceed in certain way, or that people approach them in a certain way, rather than to agree to a particular event or chain of events. All of this is a very loose basis for representatives to stand on and declare themselves to be carrying out the community's wishes.

A representative is a facilitator and an advocate and relies on good information flows to do the job. Consultation with the wider community needs to be continual and part of daily life. It needs to happen wherever people find it congenial. For organisations this may be in council meetings, for families it will be in family gatherings, for youth groups it may be around the basketball court or similar. Information-sharing should also take place during the active use and management of the land, the daily work of functional organisations. There must also be recognition that getting informed consent is always a continual process. It is not a one-off sign-off. Conditions may change, new information may come in, new understandings may be reached in the light of experience, and different interests may arise as individuals develop and the composition of groups changes over time. An important part of ongoing permission-getting is an agreed monitoring process, since changes to procedures need to take place in light of previous success or failure with implementing decisions previously arrived at.

Indigenous governance studies must move beyond excessive concentration on the structure of organisations and towards the crafting of effective consultation, information sharing, and permission getting processes. There are several prerequisites to this. First, adequate technical information must be available to those charged with disseminating and explaining it. Second, they must be able to recognise customary groupings and processes for forming and expressing opinion. This is the realm of cultural politics. Cultural politics may coalesce at times into formal institutions of political expression, but these should not be confused with effective service delivery organisations. These different levels of social life, equivalent to the distinction between political power, executive power and civil society in mainstream Australia, need to find appropriate forms of articulation with each other, subject to and monitoring the principals of cultural subsidiarity and its effect on the community. These concluding comments establish the limited remit of developmental organisations – they are not governance institutions. Consequently, there is a need for institutional links between these organisations and the existing political structure of indigenous regions, even where this is informal. Attention must turn to crafting explicitly political institutions out of these informal cultural processes. Since these will be non-liberal institutions by definition, it is important to establish the basis for deciding where interventions need to be made in order to ensure the enjoyment of human and civil rights in keeping with the principal of cultural subsidiarity.

In summary: A developmental or service delivery organisation should not be conflated with an institution of self-government. It needs neither a representative structure nor should it attempt to mimic local cultural forms. The representative structure is not required because the function of representation continues to happen where it belongs, in the cultural milieu of the community, and in the forms appropriate to the culture. Attention should turn away from representative structure (in service-delivery organisations) and towards means of communication, information transfer (in both directions), monitoring of consent, and effective policy input from the client/membership/constituency. This means seeking authority wherever it lies, whether in institutions, families or particular individuals and encouraging sound leadership. Such an approach does not mean abandoning a community to oppressive practices. Through establishing principles for acceptable standards according to the level of relations in question (family, local, regional etc), and the intensity of the inequalities experienced, autonomy is both guaranteed while at the same time its limits are set.

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## NOTES

- 1 The Reconciliation Australia Indigenous Governance Conference, Canberra, 3 to 5 April 2002, and the Building Effective Indigenous Governance Conference, Jabiru, 5 to 7 November 2003.
- 2 The Indigenous Community Governance Project based at the Centre for Aboriginal Economic Policy Research, and the Successful Indigenous Communities project based at the Australian Institute for Aboriginal and Torres Strait Islander Studies.
- 3 The criteria for success set by the Executive Council of the NCAI were, in summary: number of jobs created, tribal ownership, reservation-based, financially stable, length of operation. Since tribal institutions responded in lower numbers than individual entrepreneurs it is likely that these criteria reduced the eligibility of many of the 74 respondents (NCAI 2001:78).
- 4 Jorgensen and Taylor referred to versions of the papers published in journals. The versions available from the Harvard Project Website are more accessible. These are referred to on the site as pre-print versions of the published work and are dated earlier. These are referred to in this paper.
- 5 This may be a reference to analysis of the raw data of the 74 respondents of the NCAI study.
- 6 This is also implicit in Dodson and Smith's (2003:4-6) adaptation of Harvard principles for 'sustainable development' rather than simply for commercial enterprise.
- 7 This is currently undergoing amendment to the term 'cultural legitimacy', partly in recognition of the difficulties discussed here (Smith 2005:17-20). It nevertheless still requires interrogation of both the terms 'culture' and 'legitimacy' in their applicability to Indigenous governance.
- 8 An example of this tendency is described for the Thamurrar region by Ivory (2005).
- 9 Gellner (1998), for example, on Malinowski, for anthropology's involvement in this. The argument has been developed in greater depth by Sullivan (2005).
- 10 Rowse (forthcoming).has offered a detailed review of the development of this view in his 'Indigenous culture: the politics of vulnerability and survival'.
- 11 Sullivan (2005) has developed this argument further.
- 12 The question of 'exit rights' by which liberals seek to justify 'voluntary' membership of intolerant societies is also the subject of a wide literature (e.g. Barry 2001). It follows a similar corporatist set of assumptions as the Harvard studies, that societies are organizations like any other that people choose to belong to or to leave. The most obvious challenge to this view is to consider the exit rights of children. Even Benhabib (2002:19), who stipulates exit rights for adult members of a minority, falls prey to this voluntarist view of a culture as a free association. This sits uneasily with her more convincing arguments that culture is an effect that arises from constitutive discourse (2002:5-16). Being constitutive, a person's involvement can perhaps be changed (reconstituted), though perhaps more readily by deracinated intellectuals than by those who rely upon this constitutive discourse to make sense of the world. It cannot, however, be exited as one does of a place or an institution. Her formula for just minorities (2002:19) falls foul of her own criticism of other liberal theorists for their 'attempts to solve multi-cultural conflicts through a juridical calculus of liberal rights' (2002:21).
- 13 Strathern (2004:3) has usefully rehearsed Callon's distinction between 'hot' and 'cold' cultural situations as a way out of this dichotomy of constant change vs eternal changelessness.
- 14 Of course, political systems can be expressed through organisations, and organisations themselves both develop and reflect politics. This is not a good reason to conflate them.