

Meeting at the Crossroads: Intersectionality, Affirmative Action and the Legacies of the Aborigines Protection Board

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We need to conceptualize groups in a “postmodern” way,
recognising their reality in our lives without losing sight of the partial,
instable, contradictory character of groups existence.

Duncan Kennedy²

Introduction

The Human Rights and Equal Opportunity Commission (HREOC) *Bringing Them Home*³ report details the traumatic impact that the policies for the removal of Aboriginal children had on indigenous people and their families. Like the *Royal Commission Into Aboriginal Deaths in Custody*, the HREOC report provides a contextual understanding of the current socio-economic status of indigenous Australians. Both reports link contemporary problems endemic within Aboriginal and Torres Strait Islander communities — mental illness, substance abuse, cyclical poverty — to past government policies.

One of the threads that can be drawn from the *Bringing Them Home* report is the interplay of race and gender in personal experience.

The legacy of the Aborigines Protection Board — intersectionality of race and gender

Australian governments (colonial, federal and state) have struggled with ways of

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2 Kennedy D “A cultural pluralist case for affirmative action in legal academia” in Kennedy D *Sexy Dressing etc: Essays on the Power and Politics of Cultural Identity* (Harvard University Press, Cambridge 1993) p 34.

3 Due to the limited availability of the Report — an issue in itself! — these citations come from the report posted on the internet.

dealing with indigenous populations since European institutions were imposed in Australia. Policies included periods of massacre and genocide,⁴ segregation,⁵ assimilation,⁶ integration⁷ and self-determination⁸.

Two factors provide a crucial backdrop against which to view these policies:

Colonisation

Aboriginal people in Australia were colonised in a pattern similar to other indigenous peoples.⁹ Characteristics of this colonisation process are theft of traditional lands, and attempts to Christianise and Europeanise indigenous communities. This had a devastating impact on the way of life of indigenous populations. Aboriginal culture was viewed with distaste; its institutions and legal

4 After initial contacts governments couldn't prevent many of the massacres by white settlers who moved south in search of grazing. Often the government sanctioned mass killings. The last massacre was in the Kimberley area of Western Australia in the late 1930s. See Reynolds H *Frontier: Aborigines, Settlers, and Land* (Allen & Unwin, Sydney, 1987); Reynolds H *The Other Side of the Frontier: Aboriginal Resistance to the European Invasion of Australia* (Penguin Books, Ringwood 1990).

5 This was achieved through the establishment of missions which later became government reserves, on which Aboriginal people were forced to live.

6 This policy was implemented when it was realised that indigenous people were not going to die out as earlier governments had predicted. The policy was focused mainly on children and was aimed at eradicating Aboriginality. For narratives of government policies in addition to Reynolds *op cit*; see Goodall H *Invasion to Embassy: Land in Aboriginal Politics in New South Wales, 1770-1972* (Allen & Unwin, Sydney 1996).

7 This was a policy that reversed the eradication of culture embodied in assimilation policies. The government wanted to incorporate indigenous cultures into Australian society in what was often conceptualised as a "melting pot". Policies concerning Aboriginal people were still made by the Government and were misdirected and based on racial stereotypes.

8 This policy was introduced under Labor government. Its definition of self-determination was embodied by setting up the Aboriginal and Torres Strait Islander Commission (ATSIC) with a bureaucracy run by elected Aboriginal people. It remains to be seen how the policy will be interpreted by the new conservative Liberal Government. ATSIC was formed in a structure similar to other institutional frameworks even though this would have provided an excellent opportunity for institutional experimentalism.

9 Hawaii, New Zealand, the United States, Canada, Brazil, Chile and other South American countries provide the closest analogies. See James Anaya S *Indigenous Peoples in International Law* (Oxford University Press, Oxford 1996).

systems were ignored. Aboriginal people were excluded from the emerging dominant culture and left in a vulnerable socio-economic position, usually without access to mainstream services, such as health and education.

The effect of the Aborigines Protection Board

In 1909 the New South Wales government passed the *Aborigines Protection Act*. Each state in Australia had an equivalent statute. The Act provided for the establishment of the Aborigines Protection Board.

During the period when the main government policy was segregation and Aboriginal people were confined to missions, the Board had power to make regulations that controlled the everyday life of indigenous people. The Board decided where Aboriginal people lived, when and where they worked, even what they ate.

In 1919, the powers of the Board were amended so that the Board had the power to remove children from Aboriginal families and place them in the care of the state. There did not have to be any neglect of the child (proven or otherwise) before the powers of the Board could be exercised. The power of removal was used as a tool for the implementation of a policy that the government called "assimilation". The policy of taking children away and attempting to resocialise them into white families and communities was a form of cultural genocide.

Children removed by the Board could be either adopted into a white family (especially those with fairer skin), sent to a "home"¹⁰ or sent out to work. The racial aspect of the policy was highlighted by the way that the colour of a child's skin determined how the state would determine that child's future:

- Fairer-skinned Aboriginal children were more likely to be adopted into white families. Darker-skinned children were more likely to be institutionalised or sent out to work.

10 Girls were sent to a home at Cootamundra where they were trained to be domestic servants and boys were sent to a home at Kinchela where they were trained to be stockmen. Note that both institutions concentrated on producing a pool of manual labour rather than preparing children for further education. In addition to the oral histories collected by HREOC in preparing the *Bringing Them Home* report, see Sykes R Murrawina *Australian Women of High Achievement* (Doubleday, Sydney, 1993); Edwards C and Read P (eds) *The Lost Children: Thirteen Australians Taken From Their Aboriginal Families Tell of the Struggle to Find Their Natural Parents* (Doubleday, Sydney 1989).

- Fairer-skinned children also tended to be removed at younger ages than darker-skinned children.

Although the power to remove children remained until 1969, legacies remain. Aboriginal communities are riddled with problems of suicide, mental problems, substance abuse, family breakdown, and cycles of poverty, all of which can often be traced back to removal policies of the Aborigines Protection Board.

Testament speaks louder than statistics. The power of oral history was evident in the evidence given to the HREOC for the *Bringing Them Home* report. Here are just two examples cited in the Commission's Community Guide that speak more than figures:

... I wanted to be a nurse, only to be told that I was nothing but an immoral black lubra, and I was only fit to work on cattle and sheep properties.

... They put us in the police ute and said they were taking us to Broome. They put the mums in there as well. But when we'd gone about ten miles they stopped, and threw the mothers out of the car. We jumped on our mothers' backs, crying, trying not to be left behind. But the policeman pulled us off and threw us back in the car. They pushed the mothers away and drove off, while our mothers were chasing the car, running and crying after us. We were screaming in the back of that car.

The example of governmental attempts to eradicate indigenous ways of life and assimilate or integrate Aboriginal people into the larger realm of Australian society illustrates two points:

1. Generalizations about experience based on gender are fallacious

Gender and race

The experience of women through the Aborigines Protection Board highlights the danger of generalising about the experience of women. Explicit examples of this dynamic are numerous. White women grew rich on land stolen from the families of Aboriginal women who were then left without an economic base. Middle class white women used the slave labour of Aboriginal children in their kitchen when they were assigned by the Aborigines Protection Board. White women focused on the provision of child care while Aboriginal women were in constant danger of losing children to the state. White women were lobbying for equal pay while government policy was to ensure that Aboriginal women did not become educated past the age of 14.

When women attained the right to vote in Australia, the right did not extend to Aboriginal women.

These examples highlight the lack of a universal experience for women. Importantly they also highlight the way in which white women have been complicit in the oppression of Aboriginal women. To speak of gender without discussing the impact of race is simplistic.

Gender and class

Middle class women have had better access to education and other facilities than working class women. This is reflected in the way that their voice has dominated feminist discourse to the exclusion of the voices of working class women.¹¹ Another illustration is the impact of affirmative action programs which have benefited better educated middle class white women, those who have more resources than working class women. To talk about gender without talking about class is also simplistic.

2. The legacy of racial discrimination

Colonisation and past government policies have had tragic impact on every Aboriginal person. Overt exclusion of the Aboriginal minority continued until 1967 when indigenous communities were given the same legal status in the Constitution as other Australian citizens.¹² The policy of removing children remained until 1969. Discrimination on the basis of race still exists in ways that permeate the every day lives of indigenous people. Indigenous people face the racist attitudes of service providers, negative stereotypes in popular culture and racist violence. Such prejudice becomes institutionalised. There is a racial experience and history that needs to be acknowledged. Accepting that this history needs to be acknowledged raises the important question of *how* to recognise it.

This question needs to be answered in light of three dangers in dealing with experiences of racial discrimination:

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- 11 Note the essentialist critiques of feminism and its inability in the past to include effectively the experiences of working class women. See generally Wing A K (ed) *Critical Race Feminism: a Reader* (New York University Press, New York 1997). This reader includes texts by Patricia J Williams and Angela P Harris that are of particular interest.
 - 12 Although the right to vote is not included in the Constitution, it is argued that Aborigines were not excluded from citizenship by the Constitution. The right of Aborigines to vote was stopped by state legislation. The referendum, by transferring the power to make laws relating to Aboriginal people, allowed for those discriminatory state laws to be over-ruled. See Galligan and Chesterman "Aborigines, citizenship and the Australian Constitution: Did the Constitution exclude Aboriginal people from citizenship?" (1997) 8 *Public Law Review* 45.

First, if dominant culture ignores this racial experiences it increases the isolation of the excluded group compounding the difficulty of achieving their inclusion into society.

Acknowledgment of this racial experience empowers those who have suffered as it legitimates their experience. Recognition of their experience also allows the dominant culture to come to terms with their past, destroying false constructions of nationalism as ignorance evaporates. The HREOC report goes well towards creating the basis on which to bring a broader understanding of the personal histories of Aboriginal people. Various community groups — from the Australian Medical Association to school children — are seeking to make supportive apologies as a result of the findings of the report. On the other hand, Prime Minister Howard did not understand that a qualified apology is a new affront.¹³

Second, recognition of past wrongs and symbolic gestures of reconciliation need to be supported by action to deal with the consequences of discriminatory policies and breaches of human rights.

Third, the excluded group needs to reconcile their experiences collectively and come to terms with the loss and grief that they have experienced. The past needs to be recognised and healed but should not become a crutch. The indigenous community needs to take their own action to overcome the barriers to entry into society and

13 The Prime Minister refused to issue an apology on behalf of the government for the removal policy. He originally cited legal impediments to such a claim. When these were dismissed as irrelevant, he steadfastly maintained that an apology was not warranted. Alan Ramsey put the Prime Minister and his party's dismissiveness of the Aboriginal experience under the Aborigines Protection Board into perspective when he described their actions in Parliament in response to Labor party concern. He noted: "It was the day all but 13 of the Government's 94 members walked from the House as Beazley was urging full equality for Aboriginal people and the day after the 30th Anniversary of the referendum which supposedly gave it to them." He compared the hour plus that was spent debating a bill that placed a levy on emu's that were killed to the 31 minutes spent on the *Bring Them Home* report. Ramsey A "Ramsey's View: A week of emus and ugliness" *Sydney Morning Herald* Saturday, 31 May 1997. I mean no disrespect to the emu's. They are, after all, my totem. The lack of understanding of these issues by the government was reflected just as brightly in the comments of the Minister for Aboriginal Affairs, Senator Herron, on the HREOC inquiry to the effect that many Aboriginal people benefited from being forcibly removed as children. See Ceresa M "Aborigines benefited from separation: Herron" *The Weekend Australian* 5-6 October 1996.

ensure that racial and gender classifications do not have a negative afterlife that will stigmatise members of the group who internalise negative stereotypes.

These issues are all the more important in light of the High Court decision in *Alec Kruger & Ors v The Commonwealth of Australia; George Ernest Bray & Ors v The Commonwealth of Australia*¹⁴ in which a Northern Territory ordinance which authorised the removal of Aboriginal children from their families was found to be valid. The court held that s 122 of the Constitution gave the Federal government an unfettered right to make laws.¹⁵ The plaintiffs' claim that the Constitution implied guarantees of legal equality, freedom of movement, freedom from removal and detention without due process of the law were dismissed. The court did not reject previous High Court cases that have found implied rights,¹⁶ but did clearly indicate that the situations in which such rights would be implied was not about to be radically increased. This cautious reading of the extent to which rights can be implied is not unexpected. But there is no doubt that — as the plaintiffs' claims in this case indicate — some sectors of the Aboriginal community had hoped that the practice of implying rights might lead to a *de facto* Bill of Rights. It seems also unlikely that there will be a legal finding of negligence on behalf of federal or states governments who implemented the policy of removal. This narrows the avenues of redress available to Aboriginal people who suffered under the policy.¹⁷

The hope of any democrat must be that eventually the racial classification and cultural practices of a group should not matter and will eventually become irrelevant in the sense that they will cease to become a barrier of access to society even if they remain a crucial mark of identity. Society needs to acknowledge the

14 Matter No. M21 of 1995; Matter No. DS of 1996 (unreported at time of publication).

15 Gaudron J dissented on this point.

16 *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106; *Theophanous v Herald and Weekly Times Ltd* (1994) 182 CLR 104, *Stephens v West Australian Newspapers Ltd* (1994) 182 CLR 21; *David Russell Lange v Australian Broadcasting Corporation* (unreported, Matter No. S109 of 1996).

17 The international human rights covenants such as the International Covenant on Civil and Political Rights that Australia has ratified remain the only rights based documents on which Aborigines could seek some redress. On the difficulties and limitations of mounting claims under international human rights documents, see James Anaya *op cit*.

importance of racial experience by recognising this experience and thereby giving it validation but in a way that does not perpetuate constructed distinctions of race, gender stereotypes or reinforce class divisions.

The socio-economic position of Australian Aboriginal people — intersectionality of race and class

Race and class intersect as much as race and gender do. Aboriginal people in Australia not only have a unique racial experience but also fall into the lowest socio-economic brackets in their country.¹⁸ Policies based on race developed due to colonisation and are evidenced by institutions such as the Aborigines Protection Board. These policies have led to a perpetuation of low socioeconomic conditions that have now entrenched indigenous peoples into an underclass as Aboriginal communities are clearly the poorest in Australia. Aboriginal communities in remote areas can live in conditions similar to those of impoverished communities in third world countries.¹⁹

It is possible to pinpoint two of the needs of the Aboriginal community:

The need for equal access to public spheres and the improvement of socio-economic position

The Aboriginal community is still struggling to free itself from its entrenchment in the underclass and its entrapment into a cycle of poverty. Economic power brings with it political power. Improvement of a socio-economic position goes hand-in-hand with the need for equal access to public spheres. Affirmative action programs aim to facilitate inclusion into public spheres where it has been previously denied. Coupled with this is a need to recognise and prevent the perpetuation of institutional racism within structures in an attempt to liberate members of the underclass.

18 Figures in brackets represent the Australian average: Life Expectancy for Men 57 (74). Women 65 (80). Infant Mortality — three times community average. High school retention rates: 25.2% (77%). Homes over occupied 33 % (8%). Home ownership: 28% (less than half that for all Australians). Median Income: \$24,600 (\$34,800). Jobless rate: 38% (8%). Long term unemployed: 60-70% (46%). In custody: 26 times the rate of non-Aboriginals — one in seven in jail are Aboriginal or Torres Strait Islanders. ATSIIC *Indigenous Australians Today* (AGPS, Canberra 1992).

19 Sykes R *Black Majority* (Hawthorn, Hudson 1989).

The need to value difference

There is real difference in the experience of different groups in Australia that is wrapped up in history. And there is a need to allow that actual difference to flourish. Society as a whole is enriched by the existence of otherness that has spiritual experience and political meaning. It is useful for society to allow difference to flourish. Contact with otherness gives the individual opportunity for self-reflection and opens up the possibilities of alternative in ways of living that can be incorporated or rejected, though both processes allow for the internal development of an individual's identity.

Intersectionalities of race, gender and class highlight the problem of finding institutions that effectively create an equitable society. This issue has taunted democratic societies all over the world. There is no doubt that 'democracy' is an elusive concept, both in theory and in practice. Its conceptual parameters have been pushed, extended and distorted to give way to a plethora of different, often conflicting notions: the right to vote, universal suffrage, consensus, majoritarianism, access, voice. It can also be asserted that within its democratic vision, Australia has embraced the notion of equality. This is evidenced by the ratification of the *International Covenant on Civil and Political Rights* and the passing of *Racial Discrimination Act 1975* (Cth).

To achieve this vision, Australian society needs, as a minimum, to be a place where an individual can participate in society with respect and dignity, regardless of his or her identity — cultural values, ethnicity, gender, sexual orientation, weight. The challenge for the democrat is to ensure that categories of race, gender and class which have been, and continue to be, a source of disparate treatment no longer form the basis for excluding groups and citizens from public life.

Australian nationalism²⁰ is premised on the glorification of the white working class male immortalised in the poetry of Henry Lawson and Banjo Patterson. History romanticises the frontiersman, the man battling against the harsh Australian elements.²¹ In modern times, this image has been transformed to the worker, usually

20 Nationalism is also a construct without any legitimate basis. In addressing inequality in society, false nationalism also needs to be targeted. See Anderson B *Imagined Communities* (Verso, New York 1983).

21 These sentimentalised images have been thoroughly critiqued by historians as they do not represent a truthful historical experience, although mythologising is what nationalism is all about. See Pilger J *The Secret Country* (Vintage, London 1992). Pilger has a lovely balance throughout his work of critiquing the national stereotypes while finding the traits that make Australia unique.

blue collar, who battles hard against employers. Australian nationalism and dominant cultural imagery have excluded *indigenous* communities and women.²² Ironically this glamorisation of the working *class* has not been incorporated into Australian law or policy. Class differences are rarely addressed within Australian society.

To counter this antagonistic nationalism that has been used to blanket many of the human rights violations Aboriginal people have had to endure as a result of invasion and colonisation, Aboriginal people need remedies that will work at parallel levels — grass-roots, local, state and federal initiatives — and that cover a spectrum of possibilities: self-government, greater community autonomy, grass-roots organisations, compensation for breach of trust and breach of duty.

This is especially challenging in the current political climate where Aborigines enjoy little or no popular support for the recognition of their rights' initiatives.²³

The democratic project of producing equality and access requires a piecemeal and episodic approach to change. Democratic reform should take place simultaneously in different spheres albeit at different paces. Structural change needs to be visionary and strategic in that there must be an overall vision and a constant wrestling with institutional forms through various methods to attempt to reach those over-arching ambitions. The democratic vision of equality needs to be implemented with a strategic democratic project of structural change specifically aimed at realising this democratic vision.

Affirmative action and education — intersectionality of gender, race and class

Two strategies that must be included in the tool-box of remedies for inequality are first, *affirmative action programs* that recognise the need for equal access and

22 Although Australia was one of the first countries in the world to allow women to vote, Australian conforms with the sexist hierarchy and norms of most western countries. Australian women are under-represented in many professions, especially at the higher levels, earn less than their male counterparts and fill jobs in which they are over-represented and devalued.

23 Geoff Kitney summed it up: "The pendulum of compassion has swung decisively against Aboriginal people." He goes on to warn that "Pandering to populism will be yet another betrayal of Aboriginal people". Kitney G "Politicians bicker as the spirit of an ideal dies" *Sydney Morning Herald* Wednesday, 28 May 1997.

improvement of the socio-economic position of indigenous people through active, *short-term* initiative. And second, restructuring the *education system* so that it is more responsive to the need of balancing and changing perspectives. The latter is a *long-term* project.

These two projects work together. Affirmative action allows for changes in the short-term to work-places, to canons and in socio-economic indicators. Education will help to facilitate long term attitudinal changes.

Affirmative action

The concern here is not to justify affirmative action programs²⁴ but rather to support their continuance with radical changes.²⁵

Affirmative action is based on a vision of trying to combat discrimination by the full incorporation of excluded groups into all aspects of society, specifically in the areas of work and education. In this way anti-discrimination policies aim at an immediate and short term way of achieving a positive redistribution of positions and resources throughout society.

Affirmative action programs are an attempt at incorporation and inclusion.²⁶ They recognise the need for empowerment of the individual as a way of facilitating change. They focus on education and the improvement of personal economic

24 Duncan Kennedy *op cit* argues that the destabilising effect of affirmative action will have intellectual benefits. He shows that the benefits gained by individuals from disadvantaged groups and the groups themselves from these programs will be shared by the population in general. Diversity enriches the intellectual environment and provides greater choices to all individuals.

25 Especially interesting on critiques of affirmative action programs is the work of Fraser N "From Redistribution to Recognition? Dilemmas of Justice in a 'Postsocialist' Age" in Fraser N *Justice Interruptus: Critical reflections of the "postsocialist condition.* (Routledge, London, New York 1997). Fraser argues that for both gender and "race" the scenario that best finesses the redistribution-recognition dilemma facing affirmative action programs is socialism in the economy and deconstruction in the culture.

26 This is different to attempts of secession where disadvantaged and excluded groups aim at trying to abandon the present society and returning to a past society. Most attempts at this are usually insincere as: (1) most minority groups do not support a successionist approach, and (2) the notion of the "past society" is romanticised in hindsight rather than actual and therefore could not be revived.

capacities as ways of accelerating the process of including excluded minorities into mainstream society.

Current affirmative action programs do not challenge agents of discrimination, such as the shopkeeper who refuses to serve Aboriginal peoples, the media who perpetuates negative stereotypes of people of colour. From this it can be asserted that affirmative action programs as they are currently employed may not be the best forum to address the agents of racism. What is needed is to reform affirmative action programs and, at the same time, reform other sectors of society, such as the education system and criminal penalties which make discrimination on the basis of race illegal.

There are other deficiencies that impede the effectiveness of affirmative action programs.

The focus on constructed categories

Race is a constructed term. It is often claimed to be based on biological features. Race, like class and gender, are the constructs of the elite of society who determine how those categories are defined and the consequences of inclusion. As a result, we see phenomena such as the imputation of certain characteristics on people with particular physical features, the perpetuation of gender stereotypes and the denial of the existence of class divisions. The term "ethnic" is often used in replacement of the term "race". This does not resolve the complications of defining a group.

Arbitrary lines are drawn. Although the concept of Aboriginality is quite flexible, the requirement that a connection with the community needs to be established can be problematic. Aboriginal people dislocated by the Aborigines Protection Board would seem to be deserving recipients of affirmative action initiatives. If the Board's actions were executed as intended, the Aboriginal man or woman may not have the proper evidence to show links with the community. Many of the Board's documents were destroyed. Yet, not having the requirement of community connection may lead to affirmative action programs assisting people who have no connection or feelings of identification with the Aboriginal community.

The avoidance of issues of intersectionality

Affirmative action programs fail to address the complexity of the world. They assume sharp distinctions between black and white, male and female rather than

recognising the layering of these categories. They mask the difference in experience between white women and black women, rich black men and poor black men. When these complexities are overlooked, inequalities can be perpetuated and institutional reform becomes more difficult.

The entrenchment of class structures

Affirmative action programs ignore the existence of class divisions within society. Policies aimed at gender and race, without focusing on the truly economically disadvantaged within those categories, do not target the most needy. It needs to be decided whether it is the elites within disadvantaged groups who will take the majority of the fruits of the struggle for equality.

The agitation of politically conservative forces

Affirmative action programs excite a backlash from conservative elements in society who argue that these programs undermine meritocracy. Such critics come from the more privileged sectors of the community and their opposition is rooted in their belief that they will be disadvantaged by the perceived privilege that passes to the recipients of benefits under an affirmative action program. Or they are from other lower socioeconomic groups, such as working class men, who see themselves competing for positions and thus disadvantaged by opportunities that pass to "favoured" groups. Both complaints ignore the pervasive forces of institutional racism and the historically entrenched disadvantage that many minority groups struggle with. Such culture-laden notions of "meritocracy" do not account for an "unlevel playing field". Nor do they appreciate the richness that can be brought to institutions by the injection of diversity.

Although affirmative action targets perceived disadvantage it is problematic because it will lift some members of the group from their circumstances but not solve the basic problems of the group.

In this way, the benefits largely captured by the elite of a group have two effects. First, benefits from affirmative action programs based on gender classification go to middle class, rather than working class, women as they are better placed to take advantage of those programs since they are more likely to be better educated. Secondly, benefits from affirmative action programs based on racial classifications usually go to those within the disadvantaged group who are better able to take advantage of those policies rather than the most impoverished. Another consequence is that the elite of the oppressed community is separated from rest of their group who then lose natural leaders.

The vision of affirmative action is still important. Disadvantaged and excluded communities need access to education, jobs and capital. What is needed is an alternative which keeps those democratic aims but addresses these problems.

It would seem that in order to address those problems class divisions need to be addressed at the same time. This could be facilitated by introducing elements into affirmative action programs that target class divisions.

Affirmative action programs should be developed in two stages:

- (1) In the first stage, race and gender are the categorical basis of affirmative action programs. But this would be supplemented with a quota based on class which targets the most needy of those racial groups. This could be done through means testing. For example, a certain percentage of recipients need to come from families whose income is less than the national average. In this way, class becomes a secondary characteristic in programs that provide affirmative action based on racial and gender classifications.
- (2) In the second stage, affirmative action programs target the poorest sectors of the community. Programs directly target the most economically disadvantaged but should require a quota based on race. For example, if 40% of the poorest sector is indigenous, quotas should aim at making sure that 40% of affirmative action program recipients are from that group. Similarly, if women make up 75% of the poorest sector then they should be 75% of the recipients of affirmative action. The programs target the poor but race and gender are secondary characteristics. In this way a transracial political alliance and transracial social alliance is created. It also means that there will have to be specific targeting of intersectionality. To fulfil the quota of 40% indigenous and 75% women would require that indigenous women be targeted as beneficiaries.

These quotas also ensure that affirmative action programs based on class will not be manipulated to exclude the most vulnerable groups, perpetuating race and sex discrimination practices which could be easily masked under a neutral "class" category.

Such affirmative action programs and quotas should be monitored by an institution that is not related to government nor private practice but rather such a monitoring body should operate between the two spheres. This would be useful as it would create an institution with a personality of independence, that takes into account that many affirmative action programs are the initiative of governments who use them when creating the bureaucracy.

This two-stage approach moves away from a purely racial or sex-based determinant and targets the most needy in a disadvantaged community. It is a realistic step-by-step approach that attempts to grapple with the complexities of intersectionality. Affirmative action programs targeting the inclusion of women could be implemented in a similar way so that class divisions and racial prejudice are simultaneously addressed.

There are three final points to note. First, in the move from the first stage to the second stage the relation between class and race or class and gender are reversed. Because the second stage of this two-stage approach focuses on the class divisions, the political aims of the program become less contentious. It removes antagonism that is generated when policies are based on racial and gendered differences. In this way the policies help achieve a vision of making racial differences irrelevant and at the same time producing a program that targets the most needy within society.

Secondly, it must be understood that this programmatic argument is a direction not a point. Once such programs are implemented it is likely that society will reorganise — as that is the aim of structural change. When this happens there needs to be a reassessment of affirmative action programs. Structural change must be cumulative and continuing otherwise society stagnates and inequalities become entrenched.

Finally, one argument used to defend affirmative action programs as they have previously been formulated is that, even though the elite of the targeted groups receives those benefits, those benefits will trickle down to those within the group who are more disadvantaged. There are two main problems with this. It is unclear what, if any, benefits trickle down. Often those who are advantaged through affirmative action seek to entrench their position as elites within the disadvantaged group that they have come from. For example, many women trying to obtain entry into professional fields often complain that their women superiors are as unsupportive of their efforts as the men. The second problem is that such trickle down effects, if any, occur at a pace so slow that they are not very effective in addressing the huge inequalities that exist within most societies.

The two-stage model is aimed at addressing the problems associated with the trickle down effect as the targeting of class distinctions within a disadvantaged group ensure that affirmative action programs remain class conscious.

There are some aspects of inequality that can be addressed by restructured affirmative action programs such as a two-stage model. It is clear though that this can only be one part of a democratic program of reform to redress inequality.

Affirmative action programs need to be supplemented with reforms in the education system that also aim to eradicate race, class and gender differences through structural change.

Education

"All Australians, Aboriginal and non-Aboriginal, have a right to know the full and true history of this country and deal with it." — Linda Burney²⁷

Reform of educational institutions is part of a long term project for countering inequality and exclusion of minority and disadvantaged groups. It provides a way to address the agents of racism that are outside of the reach of affirmative action projects.

The reform of education becomes a two-way street. It allows for:

... the development of an environment conducive for changing perceptions and facilitating tolerance for difference;

and,

... the opportunity to provide better education to excluded minorities, such as Aboriginal people, so that they do not need to rely on affirmative action programs but can enter institutions on their own terms.

Development of a progressive education system could be aided by the idea of making children available to schools, rather than simply making the school available to the child. To achieve this the child needs to be materially and economically supported through a social endowment for education that is provided by the state.

Allowing the school to develop the role of rescuing the child from his or her socio-economic (not cultural) circumstances, with the aim of empowering the imagination of the child and increasing their choices and opportunities, creates an institution which is concerned with fostering difference. This fostering of difference is designed to ensure the child develops a personality which can transcend his or her context.

27 Quoted in Raethel S "Plan to teach of tragedy" *Sydney Morning Herald* Monday, 2 June 1997. Linda Burney is the President of the NSW Aboriginal Education Consultative Group.

This might seem to undermine the authority of the family over the child but such educational systems would be aimed at encouraging the child's capacity rather than re-socialising the child — providing the child with opportunities that the family's economic background could not afford. The education system needs to have the *aim* of facilitating an environment in which the child can identify his or her talents and make choices about the values that he or she will live by. This means that a school system cannot allow one set of cultural values to dominate the teachings of the school. Under this type of system, Aboriginal children would have greater opportunities to be exposed to their own culture within state institutions.

The experience of Aboriginal families with the practices of the Aborigines Protection Board makes the prospect of more state control over a child a frightening prospect. The fear is that the child will become instilled with European values, be belittled for following cultural practices and become assimilated into the dominant culture.²⁸ This might be true of the education system that exists in Australia presently, which embodies a history and tradition of white supremacy. This would not be the case if the values of the education system were changed to be more inclusive.

What is attractive about such a proposal is that the focus is on allowing a child to develop in an environment where the imagination of the child is fostered and, simultaneously, the individuality of the child is valued. When these characteristics are valued in the child, the child will value them. This will lead to the creation of a personality that not only develops imaginatively and with individuality but also values those characteristics in others. In this way, the child grows to become more tolerant of difference.

The child becomes equipped to break the confines of the social position he or she

28 The attitudes of Australians reflected in the words of Prime Minister John Howard show the enormity of the challenge ahead for people committed to changing the prejudiced nationalism of Australian society. Howard reacted defensively to the findings of the HREOC report: "So far as the public is concerned, they do not believe in intergenerational guilt and they do believe that this country has a proud history." Howard is more intent on providing a palatable version of history to his children and those like them than letting them understand the true forces of history. He underestimates the intellectual capacity of Australians if he believes that we are not capable of critiquing history and learning from it.

was born in to and break the confines of the prejudices of his or her parents. The child is also equipped to appreciate diversity and difference. The child incorporates difference into his or her way of life or can reject it and reaffirm his or her own identity.

As part of achieving this change in educational institutions there needs to be a reconsideration of what has traditionally been thought of as the canons of education systems.

Canons usually reflect the values of the dominant culture. In this way they are exclusive and do not allow for appreciation of difference. For example, in Australia, there is a tradition of telling history only from 1788 and omitting the experiences of indigenous Australia through invasion and colonisation. Aboriginal children have felt excluded from the education system because of this failure to recognise their past. And non-indigenous children have been brought up in the education system that teaches them to be ignorant of their own history and prejudiced towards the indigenous populations because they do not understand them.

For this reason the changing of canons to make them more inclusive of other values is essential. Educational reform that allows for the teaching of other perspectives that compete with traditional views is one way that an atmosphere of fostering difference could be achieved. It will also emancipate the child from the prejudices of his or her parents.²⁹

But there also needs to be reform of the methodological canons that are used in school. Allowing children to become more active in the way that they learn will allow their imaginations to be sparked. It will allow children that do not respond well to the current academic teaching practices to blossom under more alternative teaching methods which will give the child a better chance of unlocking his or her talents and a greater sense of confidence both of which will make the child a more useful member of society.

In this way, the education system can lift the taint of nostalgia and superstition. The recognition of a multiplicity of canons will allow for the acknowledgment of

29 The work of organisations such as the Aboriginal Education Consultative Group have caused dramatic changes in school curriculum over the last ten years. The teaching of Aboriginal perspectives in history remains controversial as debates over the use of the word "invasion" in history texts has shown.

racial experiences that previously made members of minority and disadvantaged groups feel excluded.

These educational reforms also allow children to enter public space without humiliation. It will allow children from excluded groups to feel their difference and to create an environment in which they can equip themselves for survival in society. Educational reforms also allow those children in the included groups to value difference, creating a society that is more tolerant and thus easier to enter.

Conclusions:

The challenge of intersectionality — energy, agency and alliance building

Three issues are entwined with the transformative politics necessary for structural change.

An energised politics

There needs to be an energised political climate to motivate the institutional changes needed for reforms to affirmative action programs and the education programs.

Once politics has been energised, that energy needs to be sustained. If it is not, the political climate will stagnate and new inequalities may become entrenched. New affirmative action programs that focus on class will lead to a redistribution of resources. There needs to be constant revision of policies and practices so that emerging inequalities can be targeted.

Reforms to affirmative action and education should not be seen as the aim of the democratic project but rather as a means of furthering that project.

Agency

In order to institute reform there needs to be an agent for change. Members of excluded and disadvantaged minorities can be effective in this role. Such people already feel alienated by the institutions, so that they do not have the loyalty to them that the elite do.

Indigenous people have been excluded from the institutions of the dominant culture. They are consistently attempting to gain access to public facilities and can be an untapped source of energy. It is this energy that needs to be harnessed so as

to spark the energised politics needed to facilitate structural change.

On a personal level, agents are most effective if they are the people who most want to become the sort of person that new institutions will produce. It is the people who have a vision of a new type of society and restructuring of institutions that are the most dynamic instigators of change as those agents will have the ideas and the passion to initiate a highly energised politics.

Aboriginal people, like other minority groups, are already exposed to different canons when they live between two different cultures. They socialise and relax in a community with different cultural practices to the ones they work in. They already have more than one context in which to explore options and ways of understanding. They are constantly seeking ways of accommodating different values. For this reason indigenous people are useful agents for transformative change.

Alliance building

Such institutional change has implications for alliance building. More than one group is likely to benefit from institutional changes that lead to more inclusive institutional structures.

Women and other ethnic groups have as much to gain from the creation of more inclusive canons as indigenous peoples and as such can form an alliance with indigenous communities to initiate structural changes. History could be rewritten to include a plethora of experiences. In this way, places of intersectionality within society can be useful as starting points for alliance building in efforts at working towards inclusiveness.

Such alliances can be difficult to form because of entrenched antagonism between parties such as those between white women and indigenous women referred to above. But political alliances are created before social alliances. Political alliances could develop between particular social groups to create institutions that begin to foster tolerance and acceptance of difference.

These institutions will further foster difference and tolerance in those who are educated within those institutions. Individuals can shape institutions as effectively as institutions can shape individuals. In this way those political alliances may transcend the social alliances.

There is one caution to bear in mind about alliances that are formed because of a collective political goal. After the benefits are obtained through that political

association, the alliance can fracture. For example, several indigenous nations will band together to seek benefits from the government (eg: money to buy land), but once those benefits were forthcoming, the alliance fractures as different sectors compete with different agendas.

If the role of the democrat is to achieve equality, the democratic project requires an unending search for strategies of achieving a vision that allows the inclusion into public space for all members of society.

Exploring combinations of race-based and class-based solutions are but one way to do this. Rethinking current programs like affirmative action and reform of education institutions can provide a starting point for a program of democratic experimentalism that is constantly tinkering with, revising and exploring institutional forms.

Indigenous people can be agents to facilitate the energised politics necessary to begin the path towards the transformation of institutions as part of the democratic process. It will then be necessary to find ways of sustaining this political energy. Structural change will lead to redistribution. Democratic reformers will constantly need to be assessing ways of countering inequalities.

In this way, society learns to conquer and transcend structures that have been idolised in the past, blindly binding society to those structures. This ability to change institutions will lead to the creation of new values which will in turn produce new and different institutional forms.

The result will be a more imaginative way of thinking about the world. The realisation that society is not confined by its current institutional arrangements will enable excluded and disadvantaged groups to resist the legacy of history in favour of confronting the problems history has presented them with.

The Bringing Them Home report, in providing a contextual understanding of the continuing oppression of indigenous peoples, takes a crucial step towards creating effective remedies that might face the challenge of decreasing the disparity in the living standards between the indigenous and broader Australian community.

Following through with a programmatic vision through which to tackle the inequities that this Aborigines Protection Board helped to perpetuate will remain the real challenge for any Australian interested in substantive justice for indigenous peoples.

"A nation's history rolls on, and the sins of the past, if they are not addressed adequately, roll on with it." — Tony Wright³⁰ ●

30 Wright T "Why we can't sleep soundly" *Sydney Morning Herald* Wednesday 28 May 1997.