

## **The Road to Native Title: Aboriginal Rights and the ALP 1973 -1996**

By Gary Foley

### **Introduction**

On 6th April 2001 former Labor Prime Minister Paul Keating, launching a booklet on reconciliation, stated that no issue is 'more central than addressing the place in our society of indigenous Australians'. Keating spent most of his speech attacking the Howard government on its performance in Aboriginal Affairs, and of its 'doing everything possible to avoid confronting moral issues of indigenous dispossession.' He referred to the previous 13 years of Labor administration only fleetingly, '...the Labor government in the early 1990s began to address issues such as reconciliation...'. The rest of the speech was devoted to a vigorous attack on the Howard Government and the Australian Right.<sup>1</sup> Thus we witnessed a new Australian myth under construction. This myth would suggest that the years of the Hawke and Keating Labor Government's represented a period of great progress for Aboriginal people, and that conversely, the advent of the Howard Liberal/National Government had been to the detriment of the indigenous community compared to the Labor years.

I doubt if any but the sycophants among Indigenous leaders today would say that the years of Howard government had been a time of positive progress, but that is not to say Labor governments can be regarded as having been good to Indigenous people. It is therefore timely to re-examine the experience of indigenous Australia under federal Labor Governments of the past 40 years.

In this essay I interrogate the myth of Labor being "better" for the indigenous community than the Liberal's. I shall examine the gains and losses indigenous people were able to achieve under the Hawke and Keating Governments. In

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<sup>1</sup> Paul Keating, speech to launch the Australian Quarterly Essay, in *Age*, Saturday 7 April 2001.

drawing conclusions I shall take into account some historiographic issues on whether non-indigenous historians have a legitimate voice in accounts of indigenous history.

## **Background**

All of today's older generation of Indigenous leaders gained their first experience of a Labor Government during the short era of Gough Whitlam's Prime Ministership 1972-75. The previous Labor administration had been almost twenty-five years before and thus outside the personal experience of today's younger Indigenous leadership. Whitlam became Prime Minister at a time of great social and political upheaval and his landslide election victory in December 1972 represented a time of great expectations of reform Indigenous Australians. In 1972 the Canberra correspondent for the Melbourne Age, Michelle Grattan wrote that the Aboriginal Embassy protest had, 'focussed attention all over the world on the plight and problems of the Aborigines'. She went on,

Just to maintain the "embassy" opposite Parliament House for six Months was a feat in itself. It must have brought home to white Australians how deeply the land rights issue goes with most Aborigines.<sup>2</sup>

Within weeks of Whitlam taking power, to the radical Aboriginal activists who had organised the Aboriginal Embassy it seemed that the promised reforms would come to fruition. Their hopes and expectations were further raised when, in February 1973, Prime Minister Whitlam told a crowd of indigenous representatives,

If there is one ambition my Government places above all other, if there is one achievement for which I hope we shall be remembered, if there is one cause for which future historians will salute us, it is this: that the Government I lead removed a stain from our national honour and brought back justice and equality to the Aboriginal people.<sup>3</sup>

But very quickly the Aboriginal community's high expectations were dashed as Whitlam's first Minister for Aboriginal Affairs, Gordon Bryant, proved to be

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<sup>2</sup> Grattan, M., "Aborigines 'embassy' down but their flag flying high", Age, 22nd July 1972.

<sup>3</sup> Whitlam, G., "The Whitlam Government, 1972-1975", Viking Penguin, Melbourne 1986, p. 468.

particularly inept in his dealings with the Aboriginal leadership that had emerged in the late 1960s and early 1970s. Bryant, as an 'old guard' member of the Federal Council for Aborigines & Torres Strait Islanders (FCAATSI), had been one of the whites in FCAATSI who had opposed the attempted indigenous takeover of the organisation at its 1970 Easter annual conference. In doing so he had alienated the 'new' indigenous leadership with whom he was now expected to deal.<sup>4</sup> Bryant also alienated his own Departmental head, Barrie Dexter, who he 'distrusted' and who 'he believed contrived to keep him uninformed.'<sup>5</sup>

Alienating both his departmental allies as well as his enemies, Bryant was destined not to last long, and he didn't. Peter Read observed that, 'it seemed as though everyone in Aboriginal Affairs was fighting somebody else',<sup>6</sup> Whitlam was finally forced to step in sack Bryant on 9<sup>th</sup> November 1973. Bryant had only lasted in the position for a mere 10 months, but in that time seemed to have made some powerful enemies in the newly developing Aboriginal Affairs bureaucracy in Canberra. Such was the intensity of his dispute with his own departmental officers that, almost a year after he was sacked as Minister, in August 1973 he felt compelled to pen an extraordinary memo to 'All members and senators' which was dramatically titled 'This subject concerns us all as parliamentarians'.

The memo was an attack on 'Senior Officers of the Department of Aboriginal Affairs' who Bryant stated were, 'continuing their campaign of denigration of myself and my staff in recent sittings of the Public Accounts Committee'. In this memo Bryant attempted to defend his administration of Aboriginal Affairs, which his former departmental officers were revealing to have been extremely dysfunctional.<sup>7</sup> From the Aboriginal activists perspective it was both a confirmation of how incompetent they thought Bryant had been as Minister, as

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<sup>4</sup> Peter Read, Charles Perkins: A Biography, Ringwood, Penguin, 2001, p. 169 – 170.

<sup>5</sup> Ibid., p. 169.

<sup>6</sup> Read, 2001, p. 175.

<sup>7</sup> Gordon M. Bryant, Minister for the Capital Territory, Letter to 'all members and Senators', 23 August 1974, Foley Collection.

well as revealing the level of duplicity and dishonesty that Department of Aboriginal Affairs officers were capable of stooping to.

When Bryant was sacked he was replaced by Senator Jim Cavanagh, who had been described as having 'been no particular friend of Blacks in the Adelaide plasterer's union.'<sup>8</sup> Cavanagh had been the Secretary of the Plasterers Society of South Australia from 1945 till 1962. He had entered the Senate in 1961 on a primary vote of 4000. He had a largely forgettable period in parliament until Whitlam appointed him Minister for Works in 1972. The Australian Dictionary of Biography describes Cavanagh's period as Minister, 'the most challenging twenty months of his career'. It was said that Cavanagh was chosen 'because of his administrative skills and toughness were needed to sort out managerial and financial difficulties in the department'. This further confirmed Aboriginal activists suspicions about serious dysfunction in the DAA. The Cavanagh entry in the Dictionary of Biography goes on to say,

Some commentators were surprised by his appointment because he had rarely spoken on Aboriginal issues previously, and Aboriginal groups were generally hostile to his appointment...<sup>9</sup>

Activists were hostile because from their perspective Jim Cavanagh was an old-style ALP apparatchik, promoted only because of his union influence and with attitudes toward Aboriginal issues that were paternalistic and bordering on racist. They were appalled that Prime Minister Whitlam could impose on Aboriginal Affairs such a political Neanderthal, and they came to regard this appointment as the end of their political 'honeymoon' with Whitlam.

Predictably, Jim Cavanagh was in trouble with Aboriginal people almost immediately he became Minister for Aboriginal Affairs.

Robert Tickner complains about the portrayal of the Whitlam government's administration of Aboriginal Affairs as 'accident-prone and tempestuous', and

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<sup>8</sup> Read, 2001, p. 178.

<sup>9</sup> Ian Howie-Willis, 'Cavanagh, James Luke (Jim) (1913-1990)', Australian Dictionary of Biography, [<http://adbonline.anu.edu.au/biogs/A170192b.htm>], 2009.

blames 'political point-scoring' for the demise of Bryant.<sup>10</sup> But the simple reality seems to have been that Whitlam was gravely negligent in making his first two Ministers for Aboriginal Affairs men who seemed incapable of dealing sensitively with their constituent community.

Thus, in no time at all, Senator Cavanagh was embroiled in conflict with the most senior Aboriginal public servant in his Department, Charlie Perkins. Robert Tickner's sanitized version of the subsequent events reads,

*There was a bitter falling out between Mr Perkins and his minister, and public service disciplinary charges were brought against him, only to be dropped finally at the insistence of Prime Minister Whitlam.<sup>11</sup>*

Whereas Perkins biographer Peter Read paints a detailed picture of a hapless, inept and inflexible Minister at war with both his senior Aboriginal public servant and the Labor initiated indigenous representative body, the National Aboriginal Consultative Committee (NACC). Minister Cavanagh finally, in a exasperated address to the National Press Club on 27th February, conceded that the past year had been a 'disaster' for Labor Aboriginal Affairs policies. Cavanagh threatened to abolish the NACC and later ordered Charles Perkins be suspended from DAA. It was at this point that Prime Minister Whitlam stepped in and ordered that Perkins' suspension be withdrawn. Cavanagh was humiliated, and until he was replaced in June 1975, he continued to 'enjoy' a turbulent relationship with the Aboriginal people and organisations that he dealt with.

Long before the Whitlam government met its downfall on 11 November 1975, Aboriginal leaders had come to realise that there was a significant difference between the fine words and promises of Labor, and their deeds. Charles Perkins, by now regarded suspiciously by some in the movement, 'distinguished between Labor policy, of which he approved, and of Labor administration, of which he disapproved'. But Perkins' views need to be interpreted through the prism of some of his more conservative ideas and

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<sup>10</sup> Robert Tickner, *Taking a Stand: Land Rights to Reconciliation*, Sydney, Allen & Unwin, 2001, p. 14.

<sup>11</sup> *Ibid.*, p. 15.

values which included strong anti-union views and an opposition to Asian immigration. Furthermore, Perkins was thought by some of his fellow activists to be more than mildly compromised by his new status as a senior public servant.

Most other leaders of the Land Rights Movement were thoroughly disillusioned with the Whitlam government by the time Minister Cavanagh was removed. The ALP government was having difficulty come to terms with the Aboriginal groups insistence that Whitlam deliver on his promises of 'self-determination for Aboriginal people'. As Peter Read saw it, whilst the main thing Aboriginal leaders were claiming was,

'the principle that Aborigines should run their own affairs...No official seemed capable of accepting either the message or the messenger. The defensive administration, and the government missed both the message and the fundamental change in the opposing forces which formed that message.'<sup>12</sup>

It wasn't just Aboriginal activists who were disillusioned. ALP backbenchers such as Townsville Senator Jim Keefe were greatly disappointed and Senator George Georges had said that implementation of the ALP Aboriginal Affairs policy had been 'a sad and sorry tale'.<sup>13</sup>

Thus ended the first post-war engagement between a Labor government and the indigenous community.

### **The Hawke/Keating Labour Governments 1983 – 1996**

In March 1983 Labor returned to power under the leadership of the 'silver bodgie',<sup>14</sup> Robert James Lee Hawke. As the dynamic secretary of the A.C.T.U., Hawke had enjoyed a high level of public profile and popularity, and even Aboriginal people were drawn into the belief that he would be a 'progressive' Prime Minister. In 1983, the main plank of Labor Party Aboriginal Affairs policy (strongly supported initially by Hawke himself) was to implement

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<sup>12</sup> Peter Read, 2001, p. 209.

<sup>13</sup> Justin Moloney, letter to Jim Keefe, 7 November 1973.

<sup>14</sup> John Pilger, "A Secret Country", London, Jonathan Cape, 1989, p. 179.

national, uniform Land Rights legislation. The Hawke government had promised to achieve this by overriding state governments 'by Commonwealth legislation if necessary.'<sup>15</sup>

Indigenous activists were encouraged to believe that they were on the verge of a great breakthrough in their long struggle to achieve an equitable form of land ownership through which they could begin to build toward economic self-sufficiency and genuine self-determination. Little did they realise that internal ALP factional machinations as well as a secret and corrupt political alliance in Western Australia would destroy the Land Rights movement instead.

The first Hawke government Aboriginal Affairs Minister was to be former Victorian parliamentarian and fellow Cente-Unity faction member, Clyde Holding. Most indigenous people who met him at that time found him to be aloof and fairly arrogant, which was perplexing to many given that here was a politician who had been parachuted into a safe federal Labor seat after a long and ineffective stint as leader of the opposition in the Victorian state parliament. But Holding was a factional heavy in the ALP and so rather than be pensioned off after his miserable failure in Victoria, he was instead given a ticket to Canberra and a ministerial seat to warm.

Holding was an old style, cynical Labor numbers man, as he had shown a young John Button who, whilst attending his first state ALP conference, was surprised when those advocating progressive change in the 1970s Victorian ALP were booed and hissed. As Button says,

Clyde Holding ...took me aside for counseling. 'I know', he said, 'that you believe all that stuff about integrity in politics...But that's not the way it works.'<sup>16</sup>

As well as being abrasive and abrupt, Holding had the same political problem that most Ministers for Aboriginal Affairs have had; a situation that was summed up by a by a later Minister, Robert Tickner, when he said,

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<sup>15</sup> Robert Tickner, 2001, p. 21.

<sup>16</sup> John Button, John Button: as it happened, Melbourne, Text Media, 1998, p. 125.

Ultimately, he was like all Aboriginal Affairs ministers thus far, a non-Cabinet minister as a result of the decision of the Prime Minister of the Day, invited into the inner sanctum of Cabinet only for Aboriginal affairs issues where he would have been hopelessly outnumbered by economic rationalists who had very little empathy with Aboriginal aspirations.[14]

Tickner's account reveals an interesting aspect of the Hawke government in that, despite Bob Hawke being described as one who 'held the cause of Aboriginal rights as the nation's greatest priority and had intense personal commitment to this cause',<sup>17</sup> such commitment did not extend to having Aboriginal affairs portfolio represented in Cabinet.

The other aspect of the Hawke Prime Ministership that is important to consider is the undue influence on the Federal Labor Government by a certain Mr. Brian Burke, who was then the Premier of Western Australia and federal President of the Australian Labor Party. As Quentin Beresford observed in her recent biography of Brian Burke,

Mastery of the media helped him become the most popular political leader in Australia during the 1980s. But behind the carefully cultivated charisma, Burke engaged in a world of secret deals with high risk entrepreneurs which, by the time he left office at the beginning of 1988, had begun to unravel as the WA Inc scandal.<sup>18</sup>

In the 1980s Burke's close and dubious association with fellow WA Inc members, merchant banker Laurie Connell and entrepreneur Allan Bond had meant that Burke was able to become the biggest single fundraiser for the election coffers of the federal ALP. This meant that Burke was assured of having the attention and ear of his fellow West Australian and ALP 'mate', Prime Minister Bob Hawke. Thus, Burke's revered position in the ALP would be a crucial factor in deciding the fate of the Hawke Government's policy on Aboriginal Land Rights.

Nevertheless, in the early days of the Hawke Government Aboriginal activists were initially impressed, and perhaps lulled into a false sense of security, when Minister Clyde Holding appeared to be moving swiftly to implement ALP

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<sup>17</sup> Ibid., p. 21

<sup>18</sup> Beresford, Q., "The Godfather: the life of Brian Burke", Allen & Unwin, Sydney, 2008 p.xii



policy on Aboriginal Land Rights. In Parliament he announced that the Australian Government recognised Aboriginal rights to land according to five principles:-

1. Aboriginal land was to be held under inalienable freehold title;
2. Aboriginal sacred sites were to be protected;
3. Aboriginal people to have control over mining on their land;
4. They were to have access to mining royalties; and
5. Compensation for lost land to be negotiated.

In Western Australia the newly elected Labor Premier Brian Burke was alarmed by Holding's proposed Land Rights legislation. Burke had developed a political image in his home state that supported the business community and major development projects as being vital to the state economy. The Federal government's land rights legislation would threaten major state projects, especially in the mining sector. Burke moved swiftly in an attempt to subvert the federal government's land rights legislation by appointing a state inquiry chaired by Paul Seaman in March 1983. The Seaman inquiry was intended by Burke to be a delaying tactic that would enable the vested interests of the WA mining, pastoral and farming lobbies to mount major campaigns against Aboriginal Land Rights.

Meanwhile in Canberra in September 1983 Minister Clyde Holding established an Aboriginal Land Rights Steering Committee as well as a panel of independent lawyers to provide advice. The committee was comprised of representatives of the National Aboriginal Conference (NAC) and Aboriginal Land Councils, as well as the Minister and Mr. Charles Perkins representing the Aboriginal Development Commission (a government agency). The panel of lawyers were the nominees of the various agencies represented on the Committee.

According to the account written by Ronald Tilby, Minister Holding's strategy was to,

...put pressure upon the state and territorial governments to legislate Aboriginal land rights up to the position of the draft federal legislation...states would be given a deadline for adopting legislation

commensurate with the federal position. After that deadline, the federal government would adopt over-riding legislation.<sup>19</sup>

This meant the Hawke government was issuing an ultimatum to the states and territories that if they did not legislate for land rights, then the Commonwealth would step in and over-ride the States in accordance with the powers it had gained in the 1967 referendum. Furthermore, since the federal 'preferred model' was based on the 1976 NT legislation, it would mean indigenous groups in all states and territories would be able to gain freehold title to land. In other words, real land ownership. In a speech to Parliament in December 1983, Minister Holding announced that the federal government's elected Aboriginal advisory body, the National Aboriginal Conference (NAC), would play a 'pivotal role...in the development of the National Land Rights legislation'.<sup>20</sup>

Holding in this speech clearly declared that he 'would not bring national land rights legislation to the parliament without the approval of the NAC. This was an important point because during both the Whitlam and Fraser eras the government tended to completely ignore the advice of their respective elected Aboriginal advisory bodies. Holding had earlier doubled the budget of the NAC and was now asserting that it had a critical role to play in approving the proposed land rights legislation. These developments were seen as positive signs by indigenous leaders and community expectations were high.

In November 1983 a meeting between the panel of lawyers and indigenous groups that included the NAC and Aboriginal Land Councils agreed that urgent legislation was needed to 'protect Aboriginal sacred sites that were under imminent threat'.<sup>21</sup> A draft of proposed cultural heritage protection legislation was prepared by the panel of lawyers in consultation with various Aboriginal groups, but one month later was objected to by Clyde Holding as too politically difficult to put before parliament, mainly because of provisions to veto mining on important sites. Holding continued to prevaricate and at a

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<sup>19</sup> Tilby, R.T., "Hawke's Law: The politics of Mining and Aboriginal Land Rights in Australia", University of Western Australia Press, Nedlands, 1989, p. 19.

<sup>20</sup> Ibid., p.21.

<sup>21</sup> Tilby, 1989, p. 30.

Steering Committee meeting in February 1984, in response to concern expressed by Aboriginal committee members about how a possible early federal election might affect the Minister's proposed August 1984 tabling of his Land Rights legislation, he responded with an implied warning that debate over the cultural heritage legislation would provide a sample of the public resistance to the later Land Rights legislation.

Then, at a steering Committee meeting in April 1984 Minister Holding produced an alternative draft of cultural heritage legislation that had been prepared by the Attorney Generals Department under the supervision of Attorney General, Gareth Evans. This new version of the proposed legislation had been prepared without consultation with any indigenous groups and contained provisions that 'did not provide protection for significant sites and objects unless the Minister gazetted a declaration protecting specific sites and objects, and that this delayed action.' Aboriginal members of the steering committee were outraged at the watered down document, not least because this was the first moment they had even known of its existence. It had been commissioned and produced in secret in a collusion that included Clyde Holding and Gareth Evans.

Early signs of the duplicity of Holding were clearly on show as he dismissed Aboriginal objections by declaring that this was 'the best we can expect to get through cabinet and parliament quickly. When an Aboriginal lawyer, Heather Scullthorpe, pointed out that because this was the first time they had laid eyes on the document, it was only reasonable that they be given more time to examine and consider it, Holding's response was to declare that there was no more time for consideration because he had to take the document to an ALP sub-committee meeting that afternoon. Aboriginal representatives were duly unimpressed.

Under pressure from a multi-million dollar publicity/propaganda campaign from the Australian Mining Industry Council (AMIC), Bob Hawke attended secret discussions with AMIC during which he 'indicated his personal

opposition to the Aboriginal right of rejection' (mining veto).<sup>22</sup> Furthermore, when WA Labor Premier Brian Bourke then conducted a 'disgraceful states rights campaign',<sup>23</sup> the Hawke government began to 'water down' their proposed legislation. As Dean Jaensch succinctly put it,

The reaction from Labor Premier Brian Burke in Western Australia was that he would not comply...and if forced by his party to do so, he would resign...Burke face an electorate in which a clear majority were opposed to Land Rights. He therefore placed his electoral future above the policy of his party. When faced with this, the federal Labor government simply withdrew the proposal, apparently willing to abandon both principle and platform rather than face a problem within a federal Labor party.<sup>24</sup>

Indigenous groups were outraged at the Government's duplicity and deceit, and in October 1984 the Chairperson of the National Aboriginal Conference (NAC), Rob Riley, 'attacked the Federal Government for apparently negotiating compromises on national land rights with mining and pastoral groups without the knowledge of Aboriginal groups and for reversing its stand on Aboriginal veto on mining.'<sup>25</sup> Peter Read described what happened next,

In Canberra 800 people arrived in mid-May for a week of demonstrations. On 14th May 1985 the shadow Minister for Aboriginal Affairs was shouted down at a rally outside Parliament House before demonstrators unsuccessfully charged the doors...On 16th May 200 Aborigines invaded the Department of Aboriginal Affairs at Woden.<sup>26</sup>

The honeymoon was clearly over between the Labor government and indigenous people, and within a week Clyde Holding declared that he would defer the Commonwealth's preferred Land Rights legislation since Aboriginal people were so opposed to it, and in July admitted that introduction of the legislation was deferred indefinitely. In the words of Peter Read, 'National uniform land rights was dead'.<sup>27</sup> So too was any possibility of good relations between a bitter and angry Indigenous political movement.

Roberts argues that the abandonment of national land rights legislation served to emphasize the dependant status and lack of power of Aboriginal

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<sup>22</sup> Ibid., p.295.

<sup>23</sup> Robert Tickner, 2001, p. 21.

<sup>24</sup> Dean Jaensch, *The Hawke-Keating hijack*, Sydney, Allen & Unwin, 1989, p. 116.

<sup>25</sup> Rob Riley quoted in, "Aborigines Losing Patience With Labor: NAC Chief", *Age*, 12 October 1984.

<sup>26</sup> Peter Read, 2001, p. 297.

<sup>27</sup> Ibid., p. 299.

people in relation to the Australian state and that, 'This powerlessness is further illustrated by the Hawke government's amendments to the Northern Territory Land Rights Act 1976, which in effect enabled the government to allow mining on Aboriginal-owned land.'<sup>28</sup>

The Canberra Times went further,

The Government's shameful backdown...on national land rights is but the biggest symbol of the fact that to the present Government the welfare of Aborigines comes a considerable second to expediency and appeasement of powerful vested interests<sup>29</sup>

Indigenous leaders now upped the ante and began threatening to disrupt the forthcoming 1988 Bicentennial celebrations. This made the Hawke government nervous, because they were fully aware that more than 3000 Aboriginal and Islander protesters had successfully defied The QLD government ban on demonstrations at the Brisbane Commonwealth Games in 1982.<sup>30</sup> Furthermore, radical Aboriginal groups had established an international network in the late 1970s, including the establishment of the London *Aboriginal Information Center* in 1979. By threatening to re-activate their international networks Indigenous activists posed a very real threat to Australia's reputation in the mid-1980s. Attwood and Marcus described the situation thus,

In the years leading up to the bicentenary , activists like Mansell sought to take Aboriginal politics onto the international stage, whether in the form of appealing to the United Nations and its associated agencies or to renegade governments like Libya.<sup>31</sup>

The Hawke government's reaction was to try and defuse the issues that activists were highlighting by making a series of token gestures.

On 14 July 1987 the Prime Minister announced 'that the old Department of Aboriginal Affairs would be abolished and...a new *Aboriginal and Torres Strait*

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<sup>28</sup> David, Roberts, "Self-Determination and the Struggle for Aboriginal Equality", in C. Bourke, E. Bourke, B. Edwards, *Aboriginal Australia*, UQP, 1994.

<sup>29</sup> Canberra Times, 6 March 1986.

<sup>30</sup> Scott Bennett, *Aborigines and Political Power*, St. Leonards, Allen & Unwin, 1989, pp. 18 - 19.

<sup>31</sup> Bain Attwood & Andrew Markus, (eds), *The Struggle for Aboriginal Rights: A Documentary History*, St. Leonards, Allen & Unwin, 1999, p. 279.

*Islander Commission* (ATSIC) would be created with Charles Perkins as administrative head.<sup>32</sup> The following week Clyde Holding was removed from the Aboriginal Affairs portfolio and replaced by Gerry Hand, who immediately announced that the new Commission would begin operation on 1 July 1988.<sup>33</sup> This was a statement clearly aimed at placating in the short term, those indigenous activists planning demonstrations for 1988 (who were by now being quoted in newspapers around the world)<sup>34</sup>, because ATSIC would not ultimately be established until two years later in March 1990. Further, in another apparent attempt to appease the indigenous community, on 16 October 1987 the Government announced the establishment of the Royal Commission Into Aboriginal Deaths in Custody (RCIADIC).<sup>35</sup> This move was also intended to defuse the controversy over the growing number of Aboriginal people dying in the nations gaols. That situation had attracted international media attention and was becoming a major embarrassment to the Hawke Government in the lead-in to the Bicentenary celebrations.

But all of the desperate attempts to placate the natives at the eleventh hour were to fail, and as the sun rose on Australia Day 1988 a most remarkable crowd of Aboriginal people from all nations and all parts of Australia descended on Sydney where the focus of Bicentennial celebrations would be. This extraordinary crowd of Aboriginal people, representing all walks of life and political views from all parts of the spectrum, assembled in Sydney as the largest political gathering of Aborigines, Islanders and their supporters in Australian history.

The huge crowd peacefully marched through the streets of the city to Hyde Park where a rally celebrated with the slogan, "We Have Survived". Whilst most of Australia chose to ignore the protests, the next day on page two of the New York Times the story of the protesters and their grievances were told to

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<sup>32</sup> Robert Tickner, 2001, p. 50.

<sup>33</sup> *Ibid.*, p. 51.

<sup>34</sup> See David Langsam, "It's my party and I'll cry if I want to", *New Statesman* (UK), 15th January 1988, and "Aboriginal Leader Gary Foley Talks Tough", *City Limits Magazine*, (London, UK) 12th November 1987, and "Who's Who and What's Up in the Land of Oz", *Cherry Ripe - Observer magazine* (UK), 13th December 1987.

<sup>35</sup> Robert Tickner, 2001, p. 68.

the world.<sup>36</sup> The effectiveness of the march and rally in attracting world media attention did not go unnoticed by Robert Tickner, who would later be Minister for Aboriginal Affairs.

Tickner conceded that 'there had been very little emphasis in the lead up to 1988 on the need to address indigenous aspirations as a precondition to celebrating the bicentenary', and now both he and the government were suddenly determined to 'use the decade leading to the 2001 centenary for all it was worth to advance the struggle for indigenous rights'.<sup>37</sup> Thus began a new government diversionary tactic designed to defuse future protests, a *Council for Aboriginal Reconciliation* (CAR).

At the same time as Robert Tickner was toying with the idea of a *Council of Aboriginal Reconciliation*, the new Minister Gerry Hand had begun the task of establishing ATSIC. With Perkins now co-opted with the promise of the job as head of ATSIC, Hand now embarked on a lightning schedule of 'consultation' of Aboriginal communities. In six weeks in January 1988, they held forty-six meetings and traveled over 56,000 kilometres, but were unable to gain extensive support from indigenous groups. As Read pointed out, 'some communities were more interested in what had happened to the land rights legislation on which there had also been much consultation and promise'.<sup>38</sup> There was more trouble as a Senate inquiry caused the government to postpone ATSIC's start-up date to May 1989. Then the Minister and Perkins had a major falling out and on 4th November 1988 Hand had Perkins sacked as Secretary of the Department of Aboriginal Affairs, a position he had held since 29 March 1984 when Clyde Holding had appointed him.<sup>39</sup>

The sacking of Perkins was probably the nadir of relations between the Labor government and the indigenous community in Australia. Perkins' wife Eileen said,

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<sup>36</sup> Seth Mydans, "Aborigines Cast a Shadow Over Australia's Party", New York Times (USA) 26th January 1988, p. 2.

<sup>37</sup> Robert Tickner, 2001, p. 33.

<sup>38</sup> Peter Read, 2001, p. 314.

<sup>39</sup> Ibid., pp. 322-333.

This was a government crime against the Aboriginal nation, comparable to the beheading of Pemulwuy, the taking away of the children and the imprisonment of Namatjira...he had to go. All stops were out to save the new ATSIC model - and Gerry Hand - and the credibility of the Labor Government...History will be their judge...<sup>40</sup>

As Read noted, 'Neville Bonner observed that now the bicentenary was over and the visitors and the foreign press corps departed, Aborigines were expendable again.'<sup>41</sup> Gerry Hand remained as Minister only long enough to impose ATSIC on a skeptical indigenous community in March 1990. Charles Perkins had believed that ATSIC meant 'there was to be more, not less, ministerial power. There was to be less, not more, Aboriginal self-determination'.<sup>42</sup> It seemed all the more so when Canberra public servant Lois O'Donohue was ministerially appointed as Chair of ATSIC, and the indigenous people stayed away in droves from the ATSIC elections. By that time there was a new Minister, Robert Tickner, who immediately began his 'chief initiative' of a Committee of Reconciliation,<sup>43</sup> as well as presiding over the first ATSIC elections.

The Government had a lot at stake in its creation of ATSIC and 'a critical point in the ATSIC evolution occurred during the formulation of the government's response to the Royal Commission Into Aboriginal Deaths in Custody (RCIADIC). ATSIC officials and commissioners took a leading role in achieving a whole-of-government response to the Royal Commission's recommendations.'<sup>44</sup> Thus a small, elite group of indigenous public servants, academics and ATSIC commissioners began a process of cultivating, and being cultivated by, the Government. This elite, unrepresentative group would become indispensable during the next four years of anxiety and debate about the next major indigenous issue to confront the government, that of Mabo and native title.

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<sup>40</sup> Peter Read, 2001, p. 327.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid., p. 319.

<sup>43</sup> Frank Brennan, *Sharing the Country: The case for an agreement between black and white Australians*, Ringwood, Penguin, 1991, p. 157.

<sup>44</sup> Robert Tickner, 2001, p. 54.



On 3rd June 1992 the High Court of Australia handed down the Mabo decision<sup>45</sup> which, according to Robert Tickner was, 'one of the most important decisions the high court of Australia will ever deliver and elevated the process of reconciliation.'<sup>46</sup> But to others like Michael Mansell the Mabo decision was the opposite,

...the Court did not overturn anything of substance, but merely propounded white domination and superiority over Aborigines by recognising such a meagre Aboriginal form of rights over land. The judges did little more than ease their own conscience of the guilt they so correctly feel for maintaining white supremacy.<sup>47</sup>

David Roberts observed that, 'Estimates vary as to how many Aboriginal people will directly benefit from native title, but it is likely that the number will be relatively small, no more than 5 per cent of the Aboriginal population.'<sup>48</sup> Nevertheless, the Mabo decision ultimately triggered what Markus described as 'Mabo madness' and a 'conservative over-reaction.'<sup>49</sup> This dramatic response to the High Court decision put the Keating government under intense pressure to legislate to 'take as a matter of urgency, whatever action they can to ensure that no existing property rights are rendered invalid, or less valuable, by the High Court's decision.'<sup>50</sup>

After being re-elected in March 1993 Keating appointed Frank Walker as Special Minister for State, who with Tickner would be responsible for developing the government response to Mabo. Additionally, a Mabo Ministerial Committee was established which included Ministers Duncan Kerr (acting-Attorney General), Michael Lee (Resources), Simon Crean (Primary Industries & Energy), Alan Griffiths (Industry), John Dawkins (Treasurer) and Ralph Willis (Finance). The Committee was chaired by the Prime Minister.<sup>51</sup>

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<sup>45</sup> Mabo and Orr v Queensland (1992) High Court of Australia, CLR.

<sup>46</sup> Robert Tickner, 2001, p. 86.

<sup>47</sup> Michael Mansell, "The Mabo Case: The court gives an inch but takes a mile", APG Papers, Aboriginal Provisional Government, Vol. 1 July 1992.

<sup>48</sup> David, Roberts, "Self-Determination and the Struggle for Aboriginal Equality", in C. Bourke, E. Bourke, B. Edwards, Aboriginal Australia, UQP, 1994.

<sup>49</sup> Andrew Markus, "Between Mabo and a Hard Place", in Bain Attwood, (ed) In the Age of Mabo: History, Aborigines and Australia, St. Leonards, Allen & Unwin, 1996, p. 93.

<sup>50</sup> Mining Industry Council (AMIC), in letter to Dept. of Prime Minister & Cabinet, 22 December 1992, quoted in Robert Tickner, 2001, p. 101.

<sup>51</sup> Robert Tickner, 2001, p. 107.

Immediately after the election political agitation increased again when the business community 'stepped up pressure for government action to protect existing property rights.'<sup>52</sup> But Minister Tickner was 'demoralised' by 'the economic rationalist ethos that dominated departments such as PM&C (Prime Minister & Cabinet), Treasury and Finance meant that there was inadequate or in some cases zero commitment to indigenous social justice.'<sup>53</sup> Meanwhile, the indigenous 'elite' made their move when on 22nd March 1993 Lois O'Donoghue, the government-appointed Chair of ATSIC, wrote to the Prime Minister about ATSIC concerns about the Mabo decision. A week later the government-appointed Chair of the Committee of Reconciliation, Pat Dodson, also wrote to Keating and 'called for national discussions between...representatives of the broader indigenous community.'<sup>54</sup>

The Mabo Ministerial Committee then began meetings with the various interest groups, the first with indigenous representatives being held in Parliament House on 27th April. Among the twenty-one indigenous representatives were Gularrwuy Yunupingu, John Ah Kit, Noel Pearson, Lois O'Donoghue, Patrick Dodson, Rob Riley, and Peter Yu. Rob Riley warned the Prime Minister, '...don't exclude us from the process'.<sup>55</sup> But one month later, the fear expressed by Riley appeared fully justified when Frank Walker and the Prime Minister gave approval in principle to the NT Chief Minister's plan to legislate 'to secure the mining leases of McArthur River mine.' Indigenous leaders reacted with outrage with Rob Riley declaring,

when the deal was done on McArthur River, not only did Paul Keating kick Aboriginal people in the guts, but he lost the opportunity of being recorded in history as the Prime Minister who was able to address social justice issues concerning Aboriginal people. It will take a power of persuasion for him to be able to convince people like myself and other Aboriginal people that we should give him the chance again.<sup>56</sup>

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<sup>52</sup> Ibid., p. 108.

<sup>53</sup> Ibid., p.109.

<sup>54</sup> Robert Tickner, 2001, p. 110.

<sup>55</sup> Rob Riley, quoted in Robert Tickner, 2001, p. 114.

<sup>56</sup> Ibid., p. 121.

Events began to move fast with the Wiradjuri people lodged a Mabo-style claim for native title over one-third of the State of NSW<sup>57</sup> and the federal government holding talks about native title with the State premiers whilst Aboriginal groups protested outside. One of those protestors was a Geoff Clark, representing the newly formed Aboriginal Provisional Government (APG), who on that day said, 'The fact that we are sitting outside when our interests are being negotiated inside is inappropriate...'<sup>58</sup> He need not have worried as there was little chance of agreement between the federal government and some of the recalcitrant state governments. The 'debate' raged on, as Robert Tickner remembered,

it is difficult to convey the extent to which Mabo engulfed Australia during 1993. For much of the year, hardly a day went past when there was not some new development in the debate. The words were often hateful, and the pressure on the key participants was relentless.<sup>59</sup>

But Tickner also insinuates deeply entrenched racism within the Mabo Ministerial Committee as being another factor that the indigenous people were confronted with, although he is too coy to name names.<sup>60</sup> On the 3 July the Wik people of north Qld lodged a significant native title claim that, in the climate of paranoia that had been whipped up after the Mabo decision, generated even more fear and loathing in the heartlands of white Australia. On 27 July a federal Cabinet meeting decided that 'Aboriginal people would have rights to negotiate with miners and others, with unresolved disputes to be determined by the Native Title Tribunal to be created by the proposed legislation.'<sup>61</sup>

On 3 August 1993 at Eva Valley Station, 100 kilometres east of Katherine in the NT, a major meeting of indigenous representatives issued a statement in which they rejected the government's proposed native title act and instead called for 'legislation to advance Aboriginal rights to land' and for the

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<sup>57</sup> Bain Attwood & Andrew Markus, (eds), *The Struggle for Aboriginal Rights: A Documentary History*, St. Leonards, Allen & Unwin, 1999, p. 331.

<sup>58</sup> "Heads of government meeting 'somewhat curious'", *Canberra Times*, 9 June 1993.

<sup>59</sup> Robert Tickner, 2001, p. 137.

<sup>60</sup> *Ibid.*, pp. 139 - 140.

<sup>61</sup> *Ibid.*, p. 144.

commonwealth to exclude the states from involvement in indigenous issues.<sup>62</sup> At a media conference, an angry Keating attacked the Eva Valley statement and Mick Dodson in particular for a critical speech Dodson had made in Geneva a few weeks earlier. He at the same time praised Sol Bellear and Noel Pearson for their 'supportive comments'. Yet virtually all of the Aboriginal leadership were still hostile to the way in which the government was proceeding, and on 8 October a group that included O'Donoghue, Mick Dodson and Noel Pearson held a press conference in Canberra in which they attacked the Keating government. As a result the Prime Minister began negotiations with Lois O'Donoghue and a small group of 'moderate' indigenous negotiators she assembled around her. This elite, self-appointed group, (known as the A-team) included Noel Pearson, Sol Bellear, Marcia Langton, David Ross and others. Many of those excluded from the operations of the A-team were critical of their efforts. Paul Coe and Charles Perkins issued a joint press release stating,

Attempting to legitimise the proposed Commonwealth native title legislation by having the Prime Minister negotiating with five Aboriginals so as to say Aboriginal Australia has been consulted is not acceptable...We stress that these Aboriginal negotiators have acted in direct contravention of the resolutions passed by two national meetings of Aboriginal people at Eva Valley and Queanbeyan.<sup>63</sup>

A second squad of indigenous negotiators, led by Michael Mansell and Aden Ridgeway, dubbed themselves the B-team and met with Democrat and Green senators in an effort to force concessions from the government. But on 19th October the A-team and the government announced they had reached agreement. Lois O'Donoghue at a media conference that day said, 'The decision is historic not because we have gained from the Prime Minister an agreement to everything we sought. We have been willing to compromise in the interests of a truly national settlement'.<sup>64</sup> Many would say there was too much compromise on the part of the A-team. WA Greens Senator Charmarette said 'the main concern is that Aboriginal people wanted and

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<sup>62</sup> Eva Valley Statement, 5 August 1993, from, H.C. Coombs, *Aboriginal Autonomy*, Cambridge, Cambridge University Press, 1994, pp. 231 - 234.

<sup>63</sup> Joint Press Release by Paul Coe and Charles Perkins, *Aboriginal Legal Service*, 11 November 1993.

<sup>64</sup> Bain Attwood & Andrew Markus, 1999, p. 337.

deserved far more than this legislation.<sup>165</sup> Rob Riley accused the government of 'having sold out the rights of Aboriginal people to the pastoralist, mining and tourist industries.'<sup>166</sup>

Nevertheless despite extensive indigenous community concern, Paul Keating introduced the native title legislation into parliament on 16 November 1993. When the Greens Senator Charmarette announced she could not support the legislation in 'its present form' and expressed support the B-teams criticism's, the leaders of the A-team, with their reputations at stake, attacked Charmarette. Lois O'Donoghue melodramatically declared 'the Greens have hijacked Aboriginal authority today', and Marcia Langton equally melodramatically asserting that without Keating's native title act 'native title will be extinguished everywhere. The mining companies will do us over'.<sup>167</sup> The Greens were placed under intense pressure by both the A-team and the Keating government, and ultimately on 21 December 1993 the Native Title Act passed through the Senate and on 1 January 1994 the Act came into force.

For the next two years the Keating government dithered its way through the Hindmarsh Island fiasco, further compounding its poor image and reputation in the eyes of the Indigenous community. By the March 1996 federal election which saw the Howard government elected, most indigenous people (except for those in bureaucracy or in favour with the government) had become completely disillusioned with the Labor government. In the years since it has become apparent to most that the much-heralded Native Title Act resolved little in terms of indigenous claims to land and justice. The recent Yorta Yorta case has dramatically highlighted the shortcomings of the legislation that was agreed to by the A-team. History is now beginning to show that both government duplicity and A-team naivete combined to effectively formalise and codify the historic dispossession of indigenous people. This is the real legacy of the Labor years.

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<sup>65</sup> Christabel Charmarette, "Charmarette details problems with proposed native title legislation", media release, 30 november 1993.

<sup>66</sup> Robert Tickner, 2001, p. 201.

<sup>67</sup> Ibid., pp. 209 - 210.

## Conclusion

If my analysis of the Hawke/Keating years is accurate, then Indigenous expectations for a Beazley Labor government should be tempered by past reality. Whilst the Hawke government came to power pretending to be a 'social-reformist' government, it proved to be politically, socially and economically conservative. The Labor Party today is even more conservative than the 1980s, so the indigenous community should have few expectations of Labor in terms of the radical change necessary if Indigenous people are to achieve justice in Australia. The changes made to the Labor Party during the Hawke/Keating era have created a party that is prisoner to 'electoralism', i.e. The 'need for a political party to be cautious. It seeks to instigate change only when it seems apparent that the electorate is at least not actively opposed to such a change.'<sup>68</sup> Any political party that is prisoner to 'electoralism' cannot and will not be able to confront the historical challenges of Aboriginal affairs. So despite paying lip service to grand principles and an essentialist, romanticist view of Aboriginal Australia, both Hawke and Keating revealed their true allegiance to the status quo and powerful vested interests when the chips were down. In this scenario it is little wonder many indigenous activists treat the promises of a potential Beazley Labor government with caution and suspicion.

Gary Foley

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<sup>68</sup> Dean Jaensch, 1989, p.158.

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