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The 2009 Community Leadership Oration

Communities in Control Conference
Melbourne, 16 June, 2009

Presentation by



Professor Mick Dodson AM
2009 Australian of the Year

Thank you and good morning everyone.

Folks, I'd like to begin by acknowledging the traditional owners on whose ancestral lands this conference takes place. My warm greetings to the Wurundjeri peoples.

Thank you also to Rhonda Galbally for inviting me to speak at this important conference today.

The theme of this conference, Communities in Control, is a theme of enormous importance and significance to me. It is important and significant because we've witnessed in this country a duplicitous approach by governments to community planning and development. This is true for Indigenous communities Australia wide but particularly in recent times in the Northern Territory, all of whom have experienced the heavy handedness of government intervention.

Today I hope to take you on a journey, a journey through what governance means and how Indigenous communities view governance.

I also want to take a look at contrasting approaches by the Australian Government to international development on the one hand and the Northern Territory Intervention on the other. And, similarly, the Northern Territory Government's approach to local government reforms, which I hope will also provide some contrast between communities in control of their own destiny and government's heavy handedness in imposing its will without regard for a community's social development.

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I've said on previous occasions it's the responsibility of government to ensure informed engagement and participation of Indigenous peoples when it comes to decisions that affect their lives. Sadly, I see very little evidence that the principles of engagement with marginalised communities are embedded in consultative processes and policy decisions concerning Aboriginal and Torres Strait Islander peoples in this country.

This doesn't just concern me. It saddens me somewhat.

Having taken you on this journey I then hope to conclude with some observations about governance and how government can work with local communities, especially indigenous communities.

Allow me to turn first to governance and good governance. Governance, in the end, is about power. It's about relationships and processes of representation, decision making and accountability. It's about who decides and who has the authority to decide. It's about how decision makers gain legitimacy.

It's about who has the influence and it's about how that influence is exercised; how decisions are made and how decision makers are held accountable to the stakeholders, both within a community and to external stakeholders such as government agencies and corporate partners.

Governance is not culturally neutral. It's shaped by world view, the norms, the concepts and values of the local community, organisation or entity.

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And determining what constitutes good governance leads to debates about values, cultural norms and desired social, economic and cultural development objectives and outcomes.

The characteristics of good government include participation, the rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability and, very importantly, strategic vision.

Steven Cornell, the Director of the Harvard Project on American Indian economic development at Harvard University, defines governance in an Indigenous nation or community context as, “The principles and mechanisms by which the will of that community is translated into sustained organised action.”

But ultimately good governance is about protecting and promoting the public interest. And the public interest is more than just the sum of a total of individual interest. People who live together must cooperate to achieve harmony and to sustain their wellbeing.

Here in Australia I’ve been involved in a major research project on Indigenous community governance which concluded late last year. This research project was a partnership between the Australian National University and Reconciliation Australia with funding from the Australian Research Council.

The research project produced some very interesting results. For example, the research has identified a number of design principles that are used by Indigenous communities and that appear to be broadly relevant and effective across different types of rural, remote and urban communities and in different local conditions and governance environments.

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I want to quote just five of the Indigenous governance design principles that have emerged from this research.

Firstly, networking governance, so that arrangements encompass layers of groups, organisations and communities, each with its own rules, authority and responsibilities.

Secondly, locating decision-making responsibility at the closest possible point of connection to the people affected, and making decisions at the higher levels when more inclusive matters require such consideration.

Thirdly, emphasising relatively egalitarian relationships between organisations, groups and kinship units, with each component of the network having relative autonomy, while also having nodes of concentrated power and authority within networks.

Fourthly, working out governance by first working out relationships and shared connections, thereby giving effect to the interconnectedness needed for network governance.

And finally, working through the governance histories of the constituent social and organisational layers in order to reinforce or develop new connections.

This research has provided Indigenous communities and governments with a more authoritative and definitive basis on which to inform their governance building initiatives and the development of government policies and programs.

It's a pity that governments are not taking these research findings into consideration. I'll return to this a bit later.

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But let me now look at Australia's approach to international aid and development in contrast. Australia's international aid program assists developing countries to reduce poverty and achieve sustainable development in line with Australia's national interest. Australia has signed undertakings that its aid programs will align with the Paris Declaration on Aid Effectiveness.

No doubt many of you are familiar with the Paris Declaration on Aid Effectiveness. It was developed at a forum convened by the OECD in Paris in February to March 2005. It looks at the responsibility of developed and developing countries for delivering and managing aid in terms of five principles. I won't go through the entire declaration. It's quite detailed. It runs over eight pages.

But the five principles are 1) ownership; 2) alignment; 3) harmonisation; 4) managing for results and 5) mutual accountability. Each of these principles involves commitments from parties, the donor and development country. In all cases they are reciprocal in nature.

For example, under Principle 1, ownership, developing countries commit to exercising effective leadership over their development policies and setting of their own strategies for poverty reduction, improving their institutions and tackling corruption. Donors commit to respecting partner country leadership and helping to build their capacity to exercise it.

Under the principle of alignment, developing countries and donors jointly commit to working together to establish mutually agreed frameworks that provide reliable assessments of performance, transparency and accountability of country systems.

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What is clear from reading the Paris Declaration is that it aspires to empower developing countries and communities through partnering with donors. It codifies how donors and recipients will interact, such that the receiving community is not disempowered. Let me say that again – and hope someone from the Government is listening – it codifies how donors and recipients will interact, such that the receiving community is not disempowered.

The Paris Declaration has now been in place for about five years and the OECD has been evaluating its implementation. Australia was among some of the many countries to be included in the first phase of evaluation. Now, I know some people mightn't agree with this but in general Australia rates well in terms of its high level of commitment of the principles of the Paris Declaration.

For example the Australian Government, through AusAID, has developed a number of country and regional strategies jointly with developing countries with reference to the Paris Declaration principles.

Secondly, the Australian Government has deployed a range of public servants to work inside governments of the Solomon Islands and Papua New Guinea to assist with building their governance capacity and strengthening governance systems.

And finally, they have established the Office of Development Effectiveness within AusAID to undertake monitoring and evaluation of Australia's programs and initiatives and to report on the progress against the United Nations Millennium Development goals.

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The OECD concludes, and again some might not agree with this, that Australia has made a reasonable start with implementing the Paris Declaration principles in its foreign aid program, especially through increased emphasis on partnerships.

Partnership and participation have become the new catchwords in international development to describe the underlying ethos. Under the Paris Declarations, donors partner with developing countries and their institutions and local communities in the hope that they gain through fuller participation in planning and implementation.

According to my colleague and friend at the Centre for Aboriginal Economic Policy Research at the Australian National University, Janet Hunt, the very latest thinking in international development suggests that a shift from partnership to ownership is essential. In other words, donors must behave in ways that respect local circumstances and provide local communities with tools to determine their own destiny.

So that's the approach we take internationally. Let's come back home, to a particular part of home, to a particular program back at home – the Northern Territory National Emergency.

The Australian Government's approach to dealing with indigenous communities within Australia, especially in the Northern Territory, stands in complete contrast to its commitment to implementing the Paris Declaration in the international development context.

After three decades of largely bi-partisan support for what some governments called self-determination in Indigenous Affairs in Australia, the last 10 years or so have seen a process of attrition, combativeness and outright hostility.

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During its last term in office the Howard Government was emboldened to implement its true intentions in Indigenous Affairs, having secured a majority in both houses of the Federal Parliament. The Howard Government began its final term by dismantling the Aboriginal and Torres Strait Islander Commission. Just months before it was voted out of office it made its most controversial act in Indigenous Affairs, with the declaration of the Northern Territory National Emergency.

Under the Northern Territory Emergency Response legislation the protections afforded under the Racial Discrimination Act and the Northern Territory anti-discrimination laws, the protections that were afforded to Aboriginal people who were captured by this new federal law, were removed. The Howard Government asserted that the steps taken under the new laws were to be characterised as special measures. Any undergraduate international law student can tell you that if it's a special measure, you don't need to suspend the protection.

Here are some of the things they did. The permit system that provided traditional owners with the authority to control who entered their lands was abolished. The compulsory acquisition of all prescribed communities for five years was introduced. A lot of people don't understand that Aboriginal land in the Northern Territory is ordinary freehold. These traditional owners are freeholders like any other freeholder in Australia. They are now the only freeholders in Australia who don't have the right to control access to their freehold land.

I live in Canberra. I'm a leaseholder. But I ought to be worried if I was a freeholder.

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These and other related measures had nothing to do with the child sexual abuse report by Anderson/ Wild, *The Little Children are Sacred* report. What these land measures had to do with that still escapes me. It's absolutely beyond me. Perhaps I'm just really thick.

Another example was the imposition of compulsory income management. Now, there have been a lot of mixed responses to this particular measure from various people in communities. Some support it, some don't. I'm not particularly concerned about that. What concerns me about this is that it was done without any consultation or engagement with the people concerned. When you talk about themes like 'Communities in Control,' that's a blatant example of where it's a nonsense to use the word 'control' in any context.

None of us, not here or anywhere else, are in any doubt that we need to intervene to make kids safe. In fact we have a responsibility to do so and so does government. And we must put responses in place that are effective. But responses should never ever involve racial discrimination.

At the time the Emergency Response was announced I expressed my concern about the recklessness with which politicians are now prepared to break the sacred principle that one does not by law discriminate against people on the basis of their race.

The International Prohibition on Racial Discrimination is an absolute prohibition. That means the obligation can't be breached even in time of war. That's what 'absolute prohibition' means.

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The problem that I have is that just about every page of the 500 pages of the legislation authorising the Intervention breaks our obligations under just about every international human rights treaty that Australia has signed up to, most fundamentally being the breach of the Universal Declaration on Human Rights.

It's not excusable in any situation when we know what needs to be done to make children safe. We know what needs to be done and it doesn't involve racial discrimination.

Now, folks, juxtapose the Howard Government's treatment of Indigenous communities in the Northern Territory with its approach to international development aid in the Pacific and Asia region. It is completely the opposite. What's happened in the Northern Territory is a totally heavy handed and a bully boy approach. It flies in the face of the accepted principles for respectful engagement.

There was no respect for rights. The communities had no say. Their dignity and control was swept away by the stroke of a pen. There's no way any Australian government could apply its interventionist approach in the Northern Territory in any of the countries in the Pacific, East Timor, Asia because it would be seen as an invasion, an act of aggression.

I welcome the Rudd Government's commitment to bringing the existing Northern Territory Emergency Response legislation within the scope of the Racial Discrimination Act. But I have very serious questions about how the Government can continue to impose compulsory income management on a section of the community based on race.

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I now want to turn to another example that I mentioned at the outset, again in the Northern Territory. It relates to local government reforms. And again it's about government heavy handedness when it comes to dealing with Indigenous communities. This is another case where a local community has had their control stripped away by government decree.

I want to acknowledge my friend and colleague Diane Smith, also from the Centre for Aboriginal and Economic Policy Research at ANU, for allowing me to draw on the results of her research and experiences in working with the Bininj communities in Western Arnhem Land in the Northern Territory.

In late 2002, the Northern Territory Government commenced discussions with Indigenous leaders from West Arnhem Land about establishing a regional local government. The Northern Territory Government was eager to find ways of supporting local governance structures that had legitimacy within the communities that were being governed.

The aim of the NT Government's policy agenda was to amalgamate the existing 65 local governing bodies spread across the Territory into around 20 larger and more sustainable councils. Victorians, no doubt, are familiar with that story.

A key goal of the reform agenda was to create Indigenous governments with legitimate authorities. The policy intention was that regional authorities would firstly have jurisdiction as regionalised forms of local government under the Northern Territory Local Government Act of 1978. Secondly, that these regional authorities would be established by voluntary agreement

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between the existing community government councils and would require, in order to amalgamate, a substantial majority of residents in favour.

Thirdly, these regional authorities would be able to undertake regional decision making to determine priorities, establish services and allocate resources.

Finally, they would provide for decision-making structures that meet the needs of the community being governed and, where applicable, incorporate strong relationships with cultural decision-making arrangements and particularly the traditional owners.

The emphasis was on flexibility of structures and timeframes and the development of culturally based representative and electoral arrangements.

It seemed that at long last we had a government that was willing to work with local Aboriginal communities to work out their regional governance arrangements for the provision of basic services.

The effort worked, for a while anyway. It took a long time. A great deal of negotiation and effort was invested by the people of West Arnhem Land and dedicated Northern Territory Government personnel on the ground.

The result was an organisation that local communities within the West Arnhem Land region trusted, viewed as their own and supported. An interim regional council was formed in anticipation of taking the reins when the Northern Territory Government could formalise the agreed arrangements.

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The people of West Arnhem Land had also worked out many of the often troublesome matters of who can speak for whom and for where, how to make collective decisions across social divides, and how to organise on a large scale where there was no previous history among their people for such large scale organisation and decision making.

However, their efforts at creating a culturally appropriate regional governance arrangement came to an abrupt end in early 2007 when the Northern Territory Government announced a new local government policy which resulted in a number of changes.

The first: the interim council for the West Arnhem region was told it would now be required to include two other communities that previously were not included, involving an even more complex set of organisational and governance arrangements.

Second, the interim council members, not unreasonably, were angered that their collective decision-making role had been pulled out from under them.

Third, the interim council was no longer regarded by the Northern Territory Government as being representative because the area of jurisdiction had been enlarged to take in other communities.

Finally, the culturally based institutions that the interim council had designed, such as their constitution and preamble, had been unceremoniously dumped.

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In short, the Northern Territory Government had betrayed the trust of the local Indigenous community. And not long after that the Federal Government followed with its so called Emergency Response.

Now, folks, what are the messages here? What are the messages we're to take away from these Australian examples, from the Government? What do we say to those who are committed to putting communities in control? What do we say about this?

Governments and commentators talk a lot about the need for Aboriginal communities to take control and responsibility and deal with what they call our dysfunction. It indeed was part of the Federal Government's justification for imposing the Emergency Response in the Northern Territory.

I think that's a little hard to take when an Aboriginal community invests a lot of time and effort in putting a regional body together that has legitimacy from its constituents and respects the inherent Indigenous culture of the community – and then when you've completed all the hard work, the government decides to step in and take over, not once but twice (in this case, the West Arnhem case first and then the Federal Government) – it's a little hard to take when the government keeps telling you, "Deal with your dysfunction".

As my colleague Steven Cornell from the Harvard Project puts it, this looks very much like the dysfunctionality of government – continually changing the rules of the game, unable to recognise or take advantage of solutions generated by Indigenous peoples and communities,

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uncertain of how to cope with diversity in those solutions, and I would add to Steven's list and say afraid of giving Indigenous communities power and control.

But I don't want to finish in a negative fashion. I want to leave you with some positive attributes about Indigenous communities. Contrary to some beliefs about Indigenous people and our communities, we don't exist frozen in time as outdated cultural museums, as the former Minister for Indigenous Affairs, Amanda Vanstone, sought to have us believe. We have a long history of highly sophisticated innovation in our governing institutions. Indigenous leaders are quite adept at connecting with non-Indigenous policy and ways of doing business.

Diane Smith has observed that for Indigenous governance to be effective and sustainable, a number of conditions must be met. These build on the Indigenous design principles I mentioned earlier that came out of the Indigenous Community Governance ARC research project.

First and foremost, the new governance institutions must be – must be – initiated by Indigenous peoples themselves on the basis of our free prior and informed consent.

Second, the role of trusted and respected leaders is crucial to institution building.

Third, governance must be undertaken in ways that resonate with community members' views of what is considered to be culturally legitimate and workable.

Fourth, external coercion and imposition of governance arrangements have little traction in changing behaviour or building commitment and responsibility.

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Finally, the community development work of trusted government community development officers can make a major contribution to enabling governance. I often think I know how the Blackfellas felt about West Arnhem, how it feels when not just the wind is taken out of your sail but the destruction of your hope and this sense of freedom and your sense of ownership of something you've built. But I've often wondered how those government guys who worked so hard with them feel. They must have been feeling just as empty about what the Government did.

Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner and Racial Discrimination Commissioner, is right when he says that Indigenous cultures vary significantly across Australia. As a result there are, there must be, a diversity of frameworks. It stands to reason. It's not rocket science.

And I agree with Tom when he says that communities need to scope and design structures and methods of governance to suit their needs and the size of their clan or community, rather than these being externally imposed in a one-size-fits-all approach.

I think the lesson we can draw from the above experiences is that governments are very, very, very reluctant to lose control. They want to retain decision-making power and control and in doing so, they fail, absolutely fail, to recognise the value and benefits of indigenous community decision making.

What concerns me most is that governments are continuing to use coercion by publicly imposing non-negotiable conditions upon which they are prepared to service Aboriginal

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communities. And when these conditions are not met they use the media to put pressure on Aboriginal communities and organisations – witness the Alice Springs town camps.

This kind of behaviour by government is destructive, disempowering and overtly political. Governments may claim the means justifies the ends, but in reality the means never gets to the ends.

This kind of behaviour is not only morally wrong but it's technically wrong. It's technically wrong because the empowerment of Indigenous peoples and communities and our unique cultures and our indigineity are vital components towards our improved wellbeing.

As Professor Cornell has found in his research with native American nations, Aboriginal communities in Australia may be willing to forego, indeed we would be willing to forego, certain benefits so as to maintain our identity and cultural practices. Because for us the vitality of the community and the continuity of a distinctive place, peoplehood and culture simply matter more than individual prosperity.

Indigenous peoples and communities are quite capable and able to resolve complex governance problems with innovative strategies. Our solutions can facilitate government policy implementation. Again, I agree with Professor Cornell when he says that what we risk losing is the aspirations of communities of peoples of Indigenous nations.

If we are serious about changing socio-economic conditions in Aboriginal communities, wherever they may be, then we have to be serious about engaging with them, not as

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recipients but as genuine partners. And that means taking our aspirations into account and respecting our culture.

Thank you for your attention.

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