A Working Future for the Seventh State

A compilation of key note speeches and presentations recorded during Statehood: A Dialogue Lecture Series 2011 auspiced by The Northern Institute
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This publication was prepared by Professor Daniela Stehlik and Ms Katrina Britnell of The Northern Institute, Charles Darwin University.

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- The Honourable Fred Chaney AO
- Professor George Williams AO
- Dr Gary Johns
- Professor Elizabeth Povinelli
- Chief Minister Paul Henderson
- Chief Justice Robert French
- Michael Tatham
- Professor Dean Carson
- Ken Parish
- Kathy De La Rue
- Judy Boland

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THE NORTHERN INSTITUTE

The Northern Institute (pictured next page) is a flagship research institute at Charles Darwin University. It was launched in October 2010 by the Chief Minister The Honourable Paul Henderson, and has national and international expertise in the social sciences, humanities, business, law and education, with a particular focus on social and public policy, and industry and community development.

Three critical components drive the Institute’s activities - People, Policy and Place.

PEOPLE

Northern Australia is home to nearly one million people. It is largely a young, dynamic demographic, with one in seven residents being Indigenous Australians.

The sparseness of settlements has and continues to define and shape us socially, economically and demographically. That the region has developed despite this speaks not only to the character and courage of those who have settled here from elsewhere but also to the resilience and determination of those who were here first.

As Australia’s ‘gateway to Asia’, Northern Australia has a strategic advantage in terms of trade and tourism with a 500 hundred year history of trading with its near neighbours. Access to education (including online and distance education), health services and improved wellbeing remain critical and significant aspirations for the populations of Northern Australia.

Economic development for the north is centred on the pastoral, mining and service sectors, which includes education, health, justice as well as hospitality and tourism. Increasingly, the northern ports (which ship more than 50 percent of national export tonnage) are seen as critical to the economic sustainability of the region.

POLICY

Forecasting and understanding the size, structure, and spatial distribution of the region is critical in designing policy and planning for the future.

The gathering of evidence through focused research provides the foundations essential for future policy formulation as well as enabling evaluation and review of existing policy frameworks.

The development of public and social policy for the Region offers important opportunities for the exchange of knowledge, research and dialogue for the improvement of the wellbeing, education and livelihoods of the communities of Northern Australia and its near Asian neighbours.

These opportunities highlight not just the causes and consequences of population flows to/from and within but also the impacts on those populations (and their communities) who choose to remain. While such demographic dynamism does make populations a challenge to model, useful approaches can include developing alternate models not reliant on large, closed and primarily urban populations.

PLACE

The future will necessitate a re-thinking and re-shaping of the traditional boundaries of knowledge production and policy making in relation to the challenges of the region.

Northern Australia is a vast, diverse and highly varied landscape, where place making (which is determined historically, culturally and socially) remains both locally focussed and
highly valued. Northern Australia consists of some three million hectares across both desert and tropical environments; a landscape steeped in deep history, where human beings have lived for more than 40,000 years.

While there are a number of regional cities in the north, many of which experience high growth and diverse economies, people in Northern Australia still continue to live ‘remotely’ – which by definition – means that their capacity to access goods and services remains restricted by distance. The region’s future challenges include the successful integration of new communication technologies, innovation in e-commerce and e-health and the role of transport in maintaining networks and connections.

The Northern Institute’s theme for 2011 was ‘Securing Futures’ and in this context the statehood lecture series provided an important public demonstration of the relevance of this theme for the Territory.

Pictured Above: The Northern Institute at Charles Darwin University, Casuarina Campus.
EXECUTIVE SUMMARY

This year (2011) recognises the centenary of the Northern Territory separating from South Australia and becoming the responsibility of the Commonwealth Government. It therefore offers an historical ‘marker’ on the journey to statehood, and an opportunity to maintain the dialogue within the Territory as undertaken by the Information Roadshow Program delivered by the Northern Territory Statehood Steering Committee during 2010. This Information Roadshow Program travelled to 50 Public Forums and conducted a number of local meetings and information sessions throughout the Northern Territory in 2010.

The Pathway to Statehood was a visioning of the future for the Northern Territory, and in her commissioning of the lecture series, the Minister for Statehood provided the following vision:

‘We want our remote towns to become vibrant, thriving towns, to become towns where there are economies and jobs for people and where people are living healthy lifestyles with their unique cultural values not only intact but part of the future of those working towns’.

The lecture series therefore took as its overarching theme: A Working Future for the Seventh State.

It was agreed that the series would have two major key note speeches – one in Alice Springs in June 2011 and one in September 2011 in Darwin. This series was presented as open to the public, without cost. This period of four months then became one of heightened interest in the issues and a number of other, related events were also supported. In addition, because of the national interest, this publication documents further events, commissioned by other organisations, but relevant to the topic.

The Northern Territory Government has scheduled a Constitution Convention in 2012. This publication, and the related presentations, form a background to this important event, and also enable a record of a ‘moment in historical time’ in the pathway to statehood.

Professor Daniela Stehlik
Professor of Sociology
Director, The Northern Institute

December 2011.
The Honourable Fred Chaney AO
THE KEY NOTE SPEECHES

ALICE SPRINGS

The Honourable Dr Fred Chaney AO
Chair, Desert Knowledge Australia Board


Title: ‘The statehood debate. Perhaps to be or not to be is not the question’

I acknowledge the Central Aranda people on whose lands we meet and who through an Indigenous Land Use Agreement are acknowledged as traditional owners of the precinct on which Desert Knowledge Australia operates.

I received the invitation to speak today in these terms:

We anticipate that this will focus on a ‘working future for remote Australia’ - which takes up the key issues as the Minister sees them: ‘... On a journey which will be led, driven and determined by the people living in our growth towns, supported by the Territory Government, local government, the Commonwealth Government and with the active participation of industry, business and the land councils.

As Chairman of Desert Knowledge Australia it is very encouraging to me that Minister Malarndirri McCarthy, as Minister for Statehood, sees the need for whatever the constitutional journey might be to be led driven and determined by the people living in the Territory Growth Towns, supported by the three levels of government and with the active participation of industry business and the land councils. I am assuming that the inclusion of the land councils means that the Minister also wants the people who live outside the growth towns on Aboriginal land in scattered settlements across the territory to have a voice in the debate. Whatever else the desert knowledge movement means it must include ensuring the voices of all desert dwellers are heard and that they have a say in the decisions which affect their lives.

I bring to this discussion a perspective which is informed by past involvement in politics, government and public administration generally and involvement in policy and administration impacting on remote Australia. Perhaps most important is the experience over recent years of working with the Northern Territory as it established Desert Knowledge Australia with its charter to work for the improvement of the social economic and environmental circumstances of the desert. Although over the whole of my working life I have had a particular interest in and concern for the circumstances of Aboriginal Australians, all of my work has involved the wider community with which Aboriginal Australia is inextricably involved and of which it is also a part. This is important as the issues around statehood impact on the whole community.

The importance of the debate

It is impossible to work in remote Australia without becoming conscious of the critical role government plays in determining the basic level of services and infrastructure immediately available, and how this influences the choices that people are able to make in respect of education, health and other services that are more or less taken for granted in capital cities. The further one moves away from regional centres the wider the gap becomes and of course in many Aboriginal communities there has been a complete failure of service provision. When the issue of what is a viable community is raised, as it so often is, it is easy to overlook that what is a viable community is largely determined by the framework provided by governments. The viability of the vigorous and attractive city of Darwin is underwritten by government decisions, many of them made a long way from Darwin, about
such things as the location of our defence forces, whether a railway line can be built, and most critically, what the flow of federal funds to a financially dependent Territory will be. Notwithstanding the successes of recent NT governments in attracting exciting new private sector activity, Darwin, like Canberra, is viable as a capital and major centre because governments require it to be in the national interest and are prepared to subsidise it accordingly.

What we know from hearing desert voices is that government is very important to their lives and that there is widespread dissatisfaction with how government works for them. These voices were so insistent that Desert Knowledge Australia brought together people with wide experience of how government works and remote Australia under the heading of the remoteFOCUS project. This project is actively working to come up with new approaches to the governance of governments in remote Australia. With the support of the Commonwealth and Western Australian governments and BHP Billiton we are undertaking substantial work on which we will be reporting over the next financial year. You all invited to be involved in this project through our website www.desertknowledge.com.au.

Tonight is not the time to talk about that project, I simply mention it as a current exercise which has confirmed some long held views of mine and introduced me to some new ideas about how we might make government work better for the 5% of Australians who live in the 85% of Australia classified as remote. It is perhaps worth mentioning that quite apart from its importance as the major part of Australia geographically it produces much of the tradeable wealth currently keeping the rest of the economy afloat. I can say that there is remarkable uniformity about the concerns that we have heard expressed. We've heard them not only from the people of the desert but also from the people in the far-flung parts of northern Australia in the State of Western Australia, in the Northern Territory, and in Queensland.

These concerns can be briefly summarised as follows:

People want and do not get:

- A say in the decisions which effect them
- More equitable and regular financial flows to remote Australia
- Better services and a responsive public service with more local accountability
- A story about Australia that includes them.

As the debate in the Northern Territory develops it is perhaps worth remembering, in fact it is essential to remember, that the complaints we hear in non-metropolitan Northern Territory are no different from the complaints we hear from similar communities in the States. It seems to me that makes a simple but important point. Statehood per se is unlikely of itself to remedy the serious, and I believe entirely justified, complaints from remote communities, black and white, about how government does not work for them. Nor will it deal with the North South divide in the NT; indeed it may exacerbate it if some recent reported comments of the Mayor of Darwin are an indication of that politically dominant city’s attitude to the rest of the Territory. Such attitudes are likely to make any government in Canberra nervous about removing Federal oversight of Territory affairs.

Lessons from across the borders
It is also worth remembering that periodically there have been new state movements in New South Wales and Queensland and Western Australia. The people of northern New South Wales, the people of North Queensland, people of the Kimberleys have espoused at different times the need for new states within the existing State boundaries or the creation
of a new state across the north of Australia. The detail of these movements need not concern us now; rather, we should see them as a marker of the fact that being a state does not necessarily produce the sort of people centred government in the regions that all people want wherever they may live. We of course live in one of the most centralised countries in the world. The great ongoing risk is that our great metropolitan capitals are more akin to city states which colonise their hinterlands rather than incorporate them into the social economic and political life of the State and nation.

The deep sense of unease in regional and remote Australia was fairly recently reflected in the political success of the National party in Western Australia at the last election. The Nationals achieved a broadened base of support through its advocacy of the Royalties for Regions program. Their success in achieving the balance of power and implementation of Royalties for Regions program is probably the most successful example of using the status quo political system to address at least one of the four major concerns mentioned above, the need for more equitable and regular financial flows to remote Australia. This was an innovative and effective political solution now enacted into law but its long term vulnerability to turns in political fortune supports the need for sustainable structural solutions which ensure fair treatment of communities outside the metropolitan centres.

While it is true that the achievement of statehood would put the Northern Territory in a less vulnerable position with respect to the Commonwealth taking overriding positions to deny local decision- making, the question needs to be asked whether that would be a worthwhile reform from the perspective of financial flows. I address later the political obstacles to achieving statehood but for now simply make the point that statehood of itself would not address the issue of internal financial balances.

In addition, current Western Australian complaints about the distribution of GST revenue (like the complaints from other states) are a reminder that the status of being a State is no guarantee of financial security. Yet it seems the States are determined to leave the Commonwealth in the powerful position of being the major taxing power. When the States were offered an opportunity to resume sharing the power to tax income by the Fraser government not even a fervent state righter like the redoubtable Sir Charles Court was prepared to take up the offer. The Northern Territory with its tiny population and limited (but growing) local resource base will no doubt give careful consideration to the financial implications of statehood. My suspicion is that existing States would argue that the change was an opportunity to redress the imbalance in revenue distribution which favours the Northern Territory significantly on per capita basis. In other words, there is a danger that the Territory might lose out.

Henry Ergas, writing in The Australian newspaper on 27 May 2011 referred to the long dysfunctional system of fiscal federalism and pointed out the “The States’ abject financial dependence on the Commonwealth causes constant conflicts and inefficiencies….The proportion of commonwealth payments to the states that is genuinely untied has diminished.” Welcome to what he refers to as “feral fiscalism- in which each jurisdiction tries to snatch revenues from others.”

To be or not to be a state – may not be the question

The core of my address tonight is that the discussion should look at a range of options for the future of the NT.

For example, the Territory is in a unique constitutional position within the Commonwealth because of its current Territory status. It is able to consider options other than a perpetuation of the three tiers of government which are enshrined through the constitutional recognition of the States allied with the clear need for local administration through local government.
Many Australians believe we are governed inefficiently by having three tiers and that we are over governed as a result. Over a long period in public life I have frequently been asked whether we could abolish the States as a means of governing Australia more effectively and more efficiently. There are many enthusiasts in that cause. As a would-be practical politician I have always waved the issue away on the grounds that we should not waste time on something that could not be achieved. It is hard to imagine any of the States, but certainly not Queensland or Western Australia, voting for their own demise or diminution.

In the 1970s the Whitlam government talked about an alternative model of the Commonwealth working with regional governments. In practice it did seek to bypass the States and deal directly with local governments. People over 60 are likely to have passionate views about the Whitlam government, but as one of the senators who assisted in its dismissal let me say that because it was an idea of the Whitlam government it is not necessarily wrong. The critical failure of the Whitlam government was not a shortage of good ideas but rather a failure to put those good ideas into a workable and affordable package. The result was to generate a sense of crisis. But the idea of central government and strong regional authorities or governments has always seemed to me to have a theoretical appeal.

Which brings me to the elephant in the room, the likely attitude of any Commonwealth government to Statehood – the NT will not have the final say. What is the current context? In 2011 both the Government and the Opposition in Canberra are talking of a second intervention in the Territory. The first intervention demonstrated a belief in the then Coalition Government that the Territory was unable to deal with the issues arising from the Little Children are Sacred report. The intervention was modified but continued under the new Labor Government. The intervention was an exercise of Commonwealth power over a Commonwealth Territory. It needs to be clearly understood that this is in effect a rolling back of Territory self government. The direction of travel at present is not towards statehood but rather the reverse, a diminution of Territory decision making.

Subsequent Canberra responses around housing and child protection do not support the view that there is confidence in Canberra that the Territory is capable of managing its own affairs in the interest of all. Given current levels of investment in the ongoing intervention and the Opposition offer of a bipartisan approach to a second intervention it is hard to see from where Canberra support for statehood would come. A Commonwealth government as a vital participant in this process might be looking for structures which protect non Darwin interests, backed up politically by a clear and demonstrated commitment over time across the political and administrative classes to govern in the interest of the whole of the NT including the significant Aboriginal minority and demonstrated capacity to do so.

Absent those conditions it may well be that discussion of Statehood is a distraction from the real issues of Territory governance rather than a matter of substance.

This lends weight to the need for discussion in the Territory to focus on what government structures would deliver good government across the Territory, rather than what appeals to Territory patriotism and the desire for equal status with the States. The “whinging” from Alice Springs as it was described from Darwin raised the sort of questions that will be in the minds of intervention inclined Federal politicians conscious of their responsibilities to the national interest as they see it and of the failure of successive governments to deal effectively with issues that impact severely on our reputation as a successful nation.
The Territory – as constitutional pioneer

There is however a significant opportunity for leadership for the Northern Territory if the current discussion can focus on what changes are meant to achieve and what government structures will enable those changes to be achieved.

The great opportunity the current Northern Territory conversation provides is to look at whether a new and quite different model might work best for the people of the Territory, and in turn the rest of Australia. I think that the proponents of statehood have to make a case that the change of constitutional status would in fact be effective in improving the way the Northern Territory’s government governs – or indeed that the people of the Northern Territory would benefit from the change, beyond the point of mere parochial pride.

There are many issues to be considered. Financial viability is critical, the cost might be more than Territory and Commonwealth taxpayers are willing to support on a sustained basis. Democratic viability, by which I mean the operation of a fully-fledged State government with such a small population, might be considered doubtful. How would the move to statehood address the concerns of non-metropolitan Territorians of the sort mentioned above? Equally the proponents of any alternative approach would need to come up with models which would be financially and democratically viable.

Within a statehood option there are many possible variations. The constitution could embed some sort of guarantee to regions of fair and reasonable treatment. As I think we all recognise, elections in the Territory are largely determined by the preponderance of electors in Darwin. Regional Territorians suffer the tyranny of democracy, similar to so other regional and remote Australians. This is just democratic politics. ‘One vote one value’ virtually guarantees that governments are formed on the basis of their responsiveness to marginal, usually metropolitan seats (the last federal and WA State election can be considered the exception that proves the rule).

Alice Springs’ Alderman John Rawnsley and the Alice Springs Town Council have formally proposed through the Northern Territory Local Government Association and through other avenues that the regions be formally recognised in the Territory Constitution and that commitments to ensure adequate financial and other commitments be assured. This seems to be a very useful addition to the debate.

However, the proponents of change, those who think an alternate two tier model might be better or some constitutional guarantee of regional fairness, probably have the hardest row to hoe because either approach would be groundbreaking for Australia. They might however be heartened by looking at the current proposals for devolution in the geographically tiny United Kingdom where strong local government authorities, with broad authority over much beyond the traditional local government role in Australia, are believed to have a better opportunity and chance to deliver services more efficiently and to the greater satisfaction of their constituents. Substantial devolution is supported by the new coalition Government in the UK but implementing that at a time of severe financial cutbacks may be an unfair trial of a promising approach to devolved government.

The exciting thing for the Northern Territory is that it is in a position to provide a blueprint for an entirely new approach to the way government is structured in Australia – or at least start a serious conversation on how the diverse desires and needs of Territorians are better comprehended and heeded by political structures. One possibility which I believe warrants serious consideration is introducing a regional governance model in the Territory. The Northern Territory, unlike the existing States, could request the Commonwealth to legislate for a two tier system of government because the Northern Territory is a Commonwealth territory. It is almost certain that in the rest of Australia such an approach would be resisted by governments which would play upon traditional loyalties to state boundaries and their administrations as well as a traditional distrust of Canberra. It would not be worth the
political risk for a State or federal government. If the people of the Northern Territory however come up with a new model, which is also thought to be a better model by whoever is in government in Canberra, real change could be achieved without constitutional amendment.

I would not raise this for your consideration if I did not think there are imperfections in the status quo of our constitutional arrangements across Australia. At the same time, as a lifelong resident in Western Australia, I am conscious of how far Canberra is both geographically and mentally from the concerns of Western Australians. For that reason and because I am a natural conservative in terms of believing in the distribution of power rather than being a centralist, I want institutional structures which divide power in as sensible a way as possible and which gives people across Australia the sense that they do have a say in their own lives and in how they are governed. As a Western Australian with long contact with regional communities I am deeply conscious of the dissatisfaction with the centralisation of power in Perth as well as Canberra in regions such as the Kimberleys, the Eastern Goldfields and Pilbara. There is evidence of similar dissatisfaction in North Queensland. They are evident in our workshops in the remoteFOCUS project which have shown that Territorians and others share similar concerns.

Of course the primary concerns of Territorians will be what works for them. That is as it should be. But cementing in the three tiers will achieve no more than what applies now in the States – in reality very possibly less because of the Territory’s relative size, in terms of people, and its particular geographic and other challenges. The views expressed by the Alice Springs Town Council in favour of a constitution which will protect and empower regions has been described as whinging by the Darwin mayor who is reported to have responded that the claim for a bigger share of funding does not stack up and that it is unconstitutional to raise inequities. His remarks might cause a non Darwin resident of the NT to be afraid of statehood and the likely tyranny of the Darwin majority.

Only the operation of a successful new system in the Northern Territory could offer any hope that the political objections to a two-tiered system of government might eventually be overcome in the States. Change at State level would be a long-term project but in my view we face huge challenges in Australia however lucky a country we are. We need to be looking at long-term continuous improvement in everything we do including how we are governed. Let the Territory lead the way.
The Honourable Fred Chaney AO presents the Keynote Lecture at Alice Springs.

The Alice Springs audience at the Alice Springs at the Alice Springs Statehood Lecture.
Professor George Williams AO
THE KEY NOTE SPEECHES

DARWIN

Professor George Williams AO
Australian Research Council Laureate Fellow & Foundation Director,
Gilbert & Tobin Centre of Public Law, University of New South Wales.

Presented for the Statehood: A Dialogue Lecture Series, A Working Future for the

Title: ‘The Path to Statehood: The Northern Territory as Australia’s Seventh State’

I begin by acknowledging the Larrakia people and their elders, past and present, as the first
nations of this land. It is a pleasure to be here, and a particular honour to be talking to you
this evening on how the Northern Territory can become Australia’s seventh State.

I address this topic not as a Territorian, and so not as someone who has a claim to speak
as part of your community.

If statehood is to work, it must reflect how Territorians want to live their lives and be
governed in the future. Indeed, one of the advantages of having a debate about statehood
is that it opens up a rare opportunity for the community to discuss these long term
questions. Instead of just responding to the controversies and questions of the day,
statehood requires people to think about the sort of society they want not just for
themselves, but also for their children and grandchildren.

I speak to these issues instead as someone versed in the language and byways of our
Federal and State constitutions and Territory self-government acts. My knowledge of these
laws, and experience of how Australia is governed, reinforce my view that the Northern
Territory should take its future into its own hands by becoming a State.

Second-Class Citizens

As residents of South Australia, the people of the Northern Territory had the same rights as
other Australians for the first 10 years of our nation. This changed on 1 January 1911 when
the Territory was surrendered by that State to the Commonwealth.

Unfortunately, since that time, people living in the Northern Territory have not been treated
equally with other Australians.

There is no justification for this, it is just the way our Constitution was designed. It reflects
the fact that the framers saw Australia’s territories through the perspective of the external
territories Australia might acquire in the Pacific or elsewhere.

Internal territories like the Northern Territory were contemplated as having a transitional
status. Being a territory was just a step on the way to statehood. The framers did not
anticipate that a place like the Northern Territory might take more than a century to make
that journey.

Whatever the origins of the idea, there is no sound reason today why someone living in
Alice Springs or Darwin or a remote Territory community should be treated differently to
someone like myself living in Sydney. Our democratic rights and responsibilities and our
ability to contribute to the nation should be the same.
This, however, is far from the case. To use a phrase of the Speaker of the Legislative Assembly, The Honourable Jane Aagaard MLA, the ordinary democratic rights of people living in the Territory are subject to the ‘grace and favour’ of the Commonwealth.

This is shown by the fact the Commonwealth has denied the Northern Territory for most of its existence a vote in Federal Parliament, even while that Parliament was able to exert almost complete control over its affairs. It was only in 1968 that the Territory was granted a voting member in the House of Representatives, and in 1973 in the Senate.

The second-class status of people living in the Northern Territory is built into the nation’s foundational legal document, the Australian Constitution:

Northern Territorians do not get the same vote as other Australians in referendums to change Australia’s Constitution. People living in the Territory did not get a vote at all in any referendum until 1977, and since then their vote has been given a lesser weight than people living in the States.

A successful referendum requires both a national majority of ‘yes’ votes and a majority of ‘yes’ votes in a majority of the States. The votes of people living in the ACT only count for the national vote and hence only have half the weight of people living in a State.

This means that in the last national referendum in 1999 on a republic, the voice of Territorians was muted and given less value. This will also be the case, unless statehood is achieved first, for the federal government’s referendum planned for 2013 on changing the Australian Constitution to recognise Aboriginal and Torres Strait Islander peoples. This of course would be a travesty given the Northern Territory’s large Indigenous population.

Territorians lack the same human rights protections as other Australians. The Australian Constitution confers very few human rights. However, those that it does include are often expressed or have been interpreted by the High Court only to protect people who live in the States. For example, section 117 states that a person ‘resident in any State’ shall not ‘be subject in any other State to any disability or discrimination’. This means that a job cannot be denied to a person because they live in Tasmania or a special fee imposed upon someone because they are resident in South Australia. On the other hand, Territorians can be discriminated against in these and other ways because they are not resident in a State.

Section 51(ii) of the Constitution says that the Commonwealth can levy taxes so long as these do not ‘discriminate between States or parts of States’. This means that the Federal Parliament cannot impose extra tax burdens on one State over and over. On the other hand, there is nothing to stop the Commonwealth from imposing additional, unfair taxes upon the Northern Territory.

Another set of problems stems from the grant self-government by the Commonwealth to the territory in the Northern Territory (Self-Government) Act 1978. The Northern Territory did not gain a Premier, a Parliament and a Governor, but the Chief Minister, a Legislative Assembly and an Administrator. The terms reflect a deliberate decision to confer a lower status on the Territory than its State counterparts.

This enabled the Commonwealth to grant self-government only on the basis that the federal government retained a power to veto each and every law made by the new Legislative Assembly. Hence, section 9 of the Northern Territory (Self-Government) Act 1978 states: ‘the Governor-General may, within 6 months after the Administrator’s assent to a proposed law, disallow the law or part of the law’.

This veto can be used in a partisan or opportunistic way, with no reasons needing to be given, nor any consideration paid to the best interests of the people of the Territory. The override has no parallel for any State Parliament, and is more suitable to a 19th century colonial possession than a modern Australian territory.
There is a similar power, drafted in the 19th century, in section 59 of the Federal Constitution that allows the Queen to annul within one year any law passed by Australia's federal parliament. Fortunately, British monarchs and their instructing British governments have had the sense never to use the power, and even though it still remains in the Constitution it has long since become obsolete.

By contrast, the veto power over territory laws is far from hypothetical. In regard to the Australian Capital Territory, the federal veto was used in 2006 to overturn the ACT Civil Unions Act. Its use has also been threatened by Liberal and Labor federal governments on other occasions.

There is currently a Bill in the Federal Parliament, the Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011, that would remove this Federal government veto over the territory laws. However, the Bill has attracted significant opposition and its passage in a hung parliament is far from assured.

An additional federal power over the Northern Territory lies in section 122 of the Australian Constitution. It that enables the Federal Parliament to override any territory law, and indeed to rewrite the terms of self-government in the Territory, or to abolish it.

The 2007 Federal intervention is an example of the use of this power. It shows how the Federal Parliament can pass special laws for the Territory without consulting local people or having any regard to their experience.

An earlier example was the 1997 Euthanasia Laws Act of the Federal Parliament. It was conceived as a way to override the legalisation of voluntary euthanasia in the Northern Territory. However, the federal law went much further than this and also removed the power of the Northern Territory to make laws on euthanasia generally. It thus not only overrode any existing laws on the topic, it took away the power to pass laws in the area in the future. This restriction can still be found in section 50A of the Northern Territory (Self-Government) Act 1978. Attempts to delete this provision have failed.

As a matter of democratic principle and good governance, the Commonwealth should not withdraw power from a self-governing jurisdiction to make laws on a topic. Removing power is a blunt instrument that prevents the making of any laws, for good or ill, including those that are clearly in the best interests of the local community. It sends a signal that the Commonwealth believes that the Territory not up the task of enacting laws on the subject at any time in the future.

My point is not to deny the proper role of the Commonwealth to govern for all Australians. Where issues arise in a territory or a State there is often a legitimate role for the federal Parliament to intervene in the national interest, such as in regard to the national economy. The problem arises when the Federal Parliament singles out and undermines democratic rights in the Territory. Where the Commonwealth overrides State laws it does so by enacting a general law for Australia, and never by taking away the power of a State Parliament. This would not only be seen as an abrogation of States’ rights, it would be invalid under the Constitution.

Precedents have been set for ongoing federal intervention in Northern Territory affairs through the overriding of local laws and the imposition of federal policies without consultation or consent. This demonstrates the practical reality of Australia’s system of government: living in the Northern Territory gives you fewer and lesser democratic rights. Simply put, you are not treated as an equal citizen with other Australians.

Fortunately, there is a way to fix this. The Constitution recognises that a territory and its people can escape their diminished status by writing their own rulebook and becoming a State.
The Path to Statehood

The Australian Constitution provides a straightforward process by which the Northern Territory can become a State. Section 121 says:

121. New States may be admitted or established The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

This means that the Northern Territory can become a State simply by a vote in both houses of Federal Parliament. No national referendum is required.

However, it is clear that the Federal Parliament can set the terms and conditions of statehood. A new State also has no automatic right to the same representation in the Senate as the original States. The Commonwealth can grant the Northern Territory statehood on the basis that its representation in the Senate remains at two, perhaps with provision for this to increase over time as the population of the Territory grows.

A positive vote of both houses of Federal Parliament is all that the law requires. However, a number of other things do need to be done first, including:

- Drafting a new constitution for the State – this will be the first new constitution in Australia since 1901. Will it merely be a rewrite of the Territory’s self government act, or a new constitution that improves upon those of the States? What will it say about Aboriginal peoples and their lands? Will rights like freedom of speech and freedom from racial discrimination be protected?

- Holding a constitutional convention – a body representative of the people will be needed to debate and draft the new constitution. In many ways this is the most important step – it is where things can easily go wrong, but also where ideas and changes can be laid down that will grow into strong popular support.

- A Territory-wide referendum – as a political reality, statehood cannot proceed unless it has the clear and demonstrated support of a majority of Territorians. It is unthinkable that the Commonwealth would transform the Territory into a State without this, even though it has the power to do so.

- Negotiating with the Commonwealth – there will need to be discussions as to the terms of statehood between the Territory and the Federal government on things like land rights and Northern Territory representation in the Federal Parliament.

I have put the task of negotiating with the Commonwealth last on the list. This reflects my view that fruitful negotiations cannot be held until the Territory has determined its own position. There is simply nothing to negotiate about until the Territory has worked out what sort of State it wishes to be.

It is also the case that the Territory’s negotiating position will be at its strongest when a specific vision for statehood is backed by a vote of its people. It will be difficult for the Commonwealth to reject important elements of statehood that have already attained majority popular support.

The Four Pillars of Achieving Statehood

Australian history is littered with a few successes, and even more failures, when it comes to achieving major constitutional reforms like statehood for the Territory.
At the national level since Federation in 1901, 44 referendum proposals have been put to the Australian people, with only eight of those succeeding. Significantly, no referendum has been passed by the people since 1977 when Australia voted, among other things, to set a retirement age of 70 years for High Court judges. As at 2011, 34 years have passed since Australia changed its Constitution. At around one-third of the life of the nation, this is by far the longest period that Australia has gone without amending its Constitution.

In *People Power: The History and Future of the Referendum in Australia*, David Hume and I examine Australia’s record of failed and successful referendums, and how this experience might be applied to bring about greater prospects of success for constitutional reform. Instead of lurching from one failed referendum to another, governments must avoid repeating the same past mistakes. If these are avoided, there is a realistic prospect of success.

The failure of the last Territory statehood process in the 1990s bears out these lessons. People of goodwill participated in that process seeking the best outcome for the Territory, and yet it produced a divisive constitutional convention, a popular belief that decisions were being pre-empted by politicians and concern among the Territory’s Indigenous population that their interests were being neglected.

Remarkably, Territorians still only just rejected the idea, casting a 51.3% No vote at the 1998 statehood referendum. Even then, it seems that many people voted No not because they opposed statehood, but other reasons. The 1999 Report of the Legislative Assembly’s Standing Committee on Legal and Constitutional Affairs shows that people generally supportive of statehood often voted No because of a lack of information, or concerns about political leadership or the how the process had been run.

The lessons of 1998 need to be learnt, and today’s statehood process should be based upon the following four pillars:

1. **Bipartisanship**
   Statehood needs a strong commitment from the government, and also from the opposition. People will not support change that they think is self-serving or for the benefit of only one side of politics. They want change that benefits the community as a whole.

   The current process is built upon bipartisan backing for a steady and measured trek towards statehood. It was significant that the next stage, the 2012 Darwin Convention, was jointly announced by Chief Minister Paul Henderson and Leader of Opposition Terry Mills.

   As a member of the Northern Territory Constitutional Convention Committee assisting with the planning of that event, I have had the opportunity to work closely with members of the government and the opposition. No partisanship has been evident in our many meetings, instead a pragmatic and constructive desire to work through issues in a way that promotes the prospects of statehood and produces an outcome of the most benefit to the community.

   Bipartisanship is essential. That said, it is by itself no guarantee of success. Voters have also shown themselves willing to reject reforms that have the support of all sides of politics if the following lessons are not also taken into account.

2. **Popular ownership**
   People want more than being asked to rubber stamp a change. They tend to be suspicious of proposals put to them by politicians. The process must give people a real opportunity to participate in and shape the change.

   For statehood to be a success, Territorians need to feel as if they ‘own’ the reform. In the past in Australia, constitutional conventions representative of the people have been the most successful way of achieving this.
The current process for statehood lets Territorians make the key decisions. The
centrepiece is a 75 member, fully-elected Peoples' Convention that will draft the Territory’s
new constitution. The convention will be held in Darwin from 21 to 29 April 2012.

In an Australian first, sitting politicians will be ineligible to stand. Political leaders may attend
the convention to put their view and to listen to the people, but may not vote in the
deliberations. Your political representatives have agreed to take a step back so that
members of the community can take a step forward to debate and decide upon the key
questions.

In another first, 16 and 17 year olds will be eligible to vote for and stand for election to the
convention. This is a great way of exciting interest and of giving young Territorians a say
about their future. It not as if older people have a monopoly on good ideas about the
Territory’s future

The Darwin convention will draft a new State Constitution to be sent to the broader
community for consultation and discussion. Convention delegates will then reconvene in
Alice Springs to ratify a final draft. If all goes well, this will be presented to the Legislative
Assembly and then put to the people of the Territory at a referendum soon after. If passed,
it will be used as the basis upon which the Northern Territory negotiates with the
Commonwealth as to its transformation into a State.

3 Popular education
People need to feel confident and conformable about change of this kind. Anxiety about
what the change means or fear about its consequences will drive them to reject the reform.

One of the most important ways of achieving popular support is to ensure that people have
the information and education they need to make an informed choice. Otherwise, reform
can be defeated by the old mantras ‘If It Ain’t Broke, Don’t Fix It’ and ‘Don’t Know, Vote No’.

Unfortunately, this type of education is desperately needed. Most Australians know very
little about their system of government. A 1987 survey for the Constitutional Commission
found that almost half the population did not realise Australia has a written Constitution.
More recent surveys have also found a disturbing lack of knowledge, or false knowledge,
about even the most basic features of our system of government. For example, it has been
found that a majority of Australians believe that we have a national Bill of Rights.

The former Statehood Steering Committee and the Office of Statehood in the Legislative
Assembly have done important, excellent work over several years in building a body of
materials that members of the community can use to understand what statehood is about.

More though needs to be done. The greatest challenge in this field lies not in producing
good materials, but in getting Australians to engage with them.

Australians tend to come to grips with an issue when they are confronted by it in the media
or when they have to make a decision. It is very difficult to educate people about something
that may or may not happen in the future.

A good opportunity for education will be during the 2012 convention. It should lead to
considerable popular debate about statehood that will assist in giving people the
information they need about the proposal.

I think there is also room for creative and imaginative approaches to educating people
about statehood. There need to be ways that people can be actively involved in the debate,
rather than being passive recipients of well-written pamphlets. If nothing else, Australians
tend not to read written information of this kind.
I like the idea of asking all Territorians is to be directly involved in the process. Perhaps there could be a competition to draft the preamble to the new State Constitution? Such competitions have been run in the past, and have been very successful in engaging members of the community such as schoolchildren.

There could even be a competition to come up with a name for the new State. As part of their ongoing discussions with the community in locations around the Territory, the Statehood Office has been asking questions such as what would be might be a good name for the new State. The answers range from the prosaic: State of the Northern Territory and Central Australia through to the bizarre, such as The Wild Bunch and, my favourite, Death Star. Asking people to think about what the name of their new State would excite popular and media interest, and bring about education along the way by drawing people into the other questions posed by the reform.

4 Sound and sensible proposal

Statehood must be developed by the people with the advice and assistance of individuals and groups that have their trust. The final proposal must be free of flaws and drafting problems. People know that constitutional change like statehood is big deal, and will be put off if the reform is not spot on. Small problems tend to be magnified into large issues that undermine support.

The change must also be shown to be necessary, usually in the sense of being needed to fix a problem or to provide a important new opportunity. Australians tend to find it hard to support something that is only a symbolic value, and want changes of this kind also to have a substantive, practical impact.

People need to understand how statehood will contribute to a better life for them and their family, and how as a state the community will be better placed to meet the challenges ahead. They need to see that statehood can bring about better government for the Territory.

The jury is out on whether the Territory will have a sound and sensible proposal for statehood. This can only be assessed when decisions have been made by the Convention. That said, I am confident that everything that can be done is being done to achieve this. Conventions tend to be good ways of drafting strong constitutions. Your convention will be composed of Territorians elected by their peers who will have access to advice from leading constitutional law and other experts from across the country.

Conclusion

The last attempt at statehood broke most of these rules. What could go wrong, went wrong, and yet Territorians still only just rejected the idea, casting a 51.3% No vote at the 1998 statehood referendum.

By contrast, the current statehood process is on the right track. A 1% vote is not too large a gap to bridge, and indeed the goal this time should be to achieve an overwhelming Yes vote. A strong Yes vote will assist the Territory in negotiating the best possible outcome with the Commonwealth.

People often ask me whether I think Northern Territory statehood has a realistic prospect of success. My response is that I think this time round it has been given the best possible chance. So long as Territorians want the change and can agree on how it should take shape, there is every reason to believe that we will soon see the emergence of Australia’s seventh State.
Guests enjoy the pre-lecture afternoon tea in the Nitmiluk Room at Parliament House, Darwin. Special guest, The Administrator Tom Pauling is pictured on the far left.

A Welcome to Country was presented by Ms Dorothy Fox.
The Honourable Jane Aagaard MLA Speaker of the Legislative Assembly of the NT, Member for Nightcliff and Chair of the Statehood Steering Committee made a presentation prior to the keynote speech.

Keynote Speaker Professor George Williams AO presents at Darwin, 21 September 2011.
Title: ‘Statehood Stalemate: a modest proposal’

Introduction

For some considerable time the Northern Territory has been attempting to become the seventh state of Australia. Territorians will decide whether or not it is worth the effort. If they are enthused and disciplined, it may happen, but only if it suits the Commonwealth government, and I suspect the states.

I have some advice on how the NT should proceed. Forgive me if it is blunt, but it is free.

In August 1998 then Minister for Territories, the Hon Alex Somlyay MP, addressed the Northern Territory Legislative Assembly about the Commonwealth government’s plans for statehood in the Northern Territory. The speech was intended to lay the foundations for a forthcoming NT referendum.

At this very moment … the Prime Minister, Hon John Howard, and the Chief Minister of the Northern Territory, Hon Shane Stone, are jointly announcing that the Commonwealth government has agreed, in principle, that Statehood should be granted to the Northern Territory.¹

What happened?

The 1988 referendum failed, is what happened, recording a ‘No’ vote of 51.3 per cent. There has been little public comment from the Commonwealth since that time. In 2008, then Federal Minister for Home Affairs Hon Bob Debus MP attending the launch of a statehood awareness campaign in conjunction with ‘30 years of Self Government’, restated the view that the people of the Territory needed to demonstrate their support for statehood before the Commonwealth would support such a move.

The NT Statehood Steering Committee conducted its final meeting on 6 December 2010, where the Committee decided to release a paper to inform discussion for the next phase of the Statehood Program.² In addition, a further paper was released in January 2011.³ There are plans for a Constitutional Convention to take place in Darwin in November 2011. A second one is planned after significant consultation takes place on the content of the draft document, which will be produced at the November Convention.⁴

If the NT wants to become a state, it will have to provide convincing proof of the intentions of Territorians. The lessons of the 1988 referendum are that Territorians will only vote for something that is spelled out and beneficial.

¹ Eighth Assembly First Session 11/08/98 Parliamentary Record No:8
² Northern Territory Statehood Steering Committee, Final Report and Recommendations to the Northern Territory Statehood Steering Committee 2005-2010 What Might the Terms and Conditions of Northern Territory Statehood be? January 2011
Equally, the Commonwealth will not allow something with which it disagrees. The NT will have to have a clear strategy to advance negotiations with the Commonwealth on the NT constitution and the powers and representation of the new state.

**NT Benefits**

The arguments for NT statehood are clear, but the benefits are perhaps not immediately apparent to the daily life of Territorians.

At present, the NT government operates under a number of constraints. The Self Government Act (Cth) allows the Commonwealth to dissolve the NT Parliament at any time, and the laws it makes can be overridden by the Commonwealth. This is illustrated by laws which have been overturned by the Federal Parliament such as euthanasia laws made by the Territory in 1996.

The Commonwealth government has capacity to implement laws and impose decisions over the Territory that could not occur in a state. Two current examples of this are the process used for the Emergency Response (the Intervention) and the consideration process for locating a nuclear waste dump in the Territory.

The Northern Territory’s voice in the Commonwealth parliament is limited to two senators compared with 12 senators allocated to each state.

While Territorians can vote in a referendum, the Territory does not count in the Commonwealth constitution’s formulation ‘a majority of states’.

There is no constitutional recognition of the existence of the NT Supreme Court. Territory residents in disputes with state residents cannot use the inherent jurisdiction of the High Court that state residents in dispute with other state residents can.

The importance of each of these may be apparent to legislators. They may not be immediately apparent to voters.

**Costs and other considerations**

The NT is dependent on the Commonwealth, not simply in a political and administrative sense. Many of its people depend on the Commonwealth for their income. These people will not want to disturb the relationship for fear of losing out. The financial relations between the NT and the Commonwealth will probably remain unchanged with statehood, but guarantees would need to be sought.

The NT is numerically small and financially weak. Nothing will change in the near or even intermediate future, and statehood may not help.

A large proportion of NT residents are dependent on welfare, which limits the NT government’s income. Commonwealth grants make up some of the short fall but not all. The Commonwealth Grants Commission distributes the approximately $45 billion GST pool according to the principle of horizontal fiscal equalization. That is, state governments should receive funding from the pool of Goods and Services Tax revenue and Health Care Grants such that, ‘if each made the same effort to raise revenue from its own sources and operated at the same level of efficiency, each would have the capacity to provide services at the same standard.’

The Commission uses revenue and particular expenditure ‘disabilities’ to calculate a ‘relativity’ which can be compared with other jurisdictions. The relativity of the Northern
Territory is 5.3, which means that the Territory receives 5.3 times per person more than the all-state average.\(^5\)

The greater need for Commonwealth grants by the Northern Territory is due to the higher demand for, and cost of delivering services to its population, and the lower capacity to raise revenue compared with other states. The demand is driven by the needs of the large Aboriginal population.

Aborigines in Australia as a whole, but more so in the NT have a very low level of engagement in the labour market. The Aboriginal participation rate in the NT is less than 50 per cent compared to over 80 per cent for non-Aborigines. The employment/population ratios are similar. By contrast, the non-Aboriginal participation rate and employment/population ratios are higher in the NT than the average for Australia.

The latter figures especially serve to underline the large gap in the Aboriginal and non-Aboriginal population’s foothold in the labour market. This, in turn, has major implications as to whom these populations view as their best provider: a state government or the Commonwealth.

### Comparison of Aboriginal and Non-Aboriginal ABS Estimates, Labour force status by State, Persons aged 15 to 64 years – 2009

<table>
<thead>
<tr>
<th></th>
<th>Participation rate %</th>
<th>Employment/population ratio %</th>
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<tr>
<td></td>
<td>NT</td>
<td>Australia</td>
</tr>
<tr>
<td>Aboriginal</td>
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<td>58</td>
</tr>
<tr>
<td>Non-Aboriginal</td>
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</table>

The Aboriginal population in the Northern Territory tends to be younger, and resides in more remote locations, than the non-Aboriginal population. It also has a higher fertility rate than the non-Aboriginal population and by around 2030 Aboriginal Territorians will comprise 35 per cent of the total Territory population. Further, 40 per cent of the non-Aboriginal population in the Territory arrived in the past ten years. The Aboriginal population makes up the majority of what may be described as ‘long term stakeholders’ in statehood. Aboriginal freehold makes up about 42 per cent of the Territory land mass with most of the remainder subject to native title under the Commonwealth *Native Title Act* 1993.\(^6\)

### Australian Bureau of Statistics Population Projections, NT and Australia, 2011 and 2056

<table>
<thead>
<tr>
<th>ABS projections</th>
<th>2011</th>
<th>NT/Aus (%)</th>
<th>2056</th>
<th>NT/Aus (%)</th>
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<td>NT</td>
<td>573</td>
</tr>
<tr>
<td>SERIES B NT</td>
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<td>1.0</td>
<td>NT</td>
<td>401</td>
</tr>
<tr>
<td>SERIES C NT</td>
<td>225</td>
<td>1.0</td>
<td>NT</td>
<td>264</td>
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The growth rate in the NT is sometimes touted as exceptional. Using three different growth scenarios out to 2056, the Australian Bureau of Statistics estimates that the NT will remain around 1 per cent of the Australian population. NT growth rates will not alter the fact that, for the foreseeable future, the NT will remain a very small component of the Commonwealth.

Advice

Taking into account these benefits, costs and further considerations, I have the following advice for those who would prosecute the case for NT statehood.

The least contentious issue in prosecuting statehood is the choice of a legal mechanism by which NT could become the seventh state. New states may be established using s.121 of the Australian Constitution ‘by the Parliament imposing such terms and conditions as it thinks fit’. I believe this is the sensible course to take. Using s.128 of the Australian Constitution to hold a national referendum is unlikely to succeed.

The contentious issues, however, are many. The Territory must decide on the nature of its constitution and on the terms of its statehood, that is, whether it is to have the same powers as other states and the same basis for representation. These matters will have to garner a strong Territory vote, but also attract support from the Commonwealth government or Opposition. While a 2006 survey conducted as part of presentations for the statehood committee indicated that 82 per cent of Territorians were in favour of statehood, the sample was possibly confined to those participating in the consultations for statehood and therefore not representative.

It is likely that the Commonwealth will do nothing unless it believes that there is benefit or at least no cost to them and possibly, to the states. The only benefit for the Commonwealth will be if it believes that it can win a seat in the Territory, or at least, not risk losing one. For example, will Labor offer statehood in a bid to pick up Solomon next time, or the Coalition Lingiari next time? This depends on the ability of the promise of statehood to sway votes. There is no evidence that statehood is a vote changer at the Federal election in the NT.

There are risks in having either a ‘big’ agenda or in having a ‘modest’ agenda to take to the Commonwealth. On balance, however, I firmly believe that any unfinished Commonwealth business will not be settled by allowing the NT to finish it ahead of the Commonwealth. It is better to proceed with a modest agenda. Indeed, euthanasia alone has probably killed any chance of statehood. If, however, the NT allows the Commonwealth to continue to reserve legislation in this area it will remove the blocker. My advice is come back to it later, as a state, and when and if Australia catches up you might have your way. I do not think that the Commonwealth will allow NT to be some sort of crucible for experimentation. That being so, the following judgements are relevant —

- Any move on statehood as a means of overturning the Emergency Response will fail
- Any move on statehood as a means of advancing an Aboriginal ‘treaty’ will fail
- Any move on statehood as a means of advancing a Bill of Rights will fail, and Seeking ‘equal’ representation will fail.

The most important principle in negotiating statehood is this. In the initial settlement, take what you can, achieve statehood and come back later for more. Attempting to combine all of the aspirations of the various constituencies in the NT will burden the bid and be sure to sink it. Taking on debates that have not been settled nationally will be fatal.
Unfinished business

There is much to be negotiated and much unfinished business. In the lead up to the 1988 referendum the Commonwealth Minister for Territories established an Interdepartmental Committee to advise the Commonwealth government in preparation for negotiating the terms and conditions for a grant of statehood. Its work was focused on:

- Legal and Constitutional Affairs (including representation)
- Indigenous issues
- Environment, National Parks and Commonwealth land
- Uranium mining
- Commonwealth Territories
- Industrial relations, and
- Financial implications.\(^7\)

By the time of the referendum, the position of the Commonwealth on statehood was not finalised and negotiations between the Commonwealth and Northern Territory governments on the terms and conditions of a grant of statehood did not commence.

These matters will have to be re-visited. I believe that the first two are the most important and I will consider these in light of my general advice to be modest in negotiations with the Commonwealth.

NT Constitution

Using the s. 21 provisions of the Commonwealth Constitution, the NT constitution has to pass the Commonwealth parliament. It needs the Commonwealth’s support.

In 1988, the chair of the Statehood Steering Committee stated that, ‘becoming a State ... provides an opportunity to look at a broader set of issues about governance and lawmaking in the 21st century, and human rights is one such issue …’.\(^8\)

And further, that

> the possibility of human rights being part of a new Territory Constitution is very much part of our current debate in developing the 7th state of Australia. The Statehood discussions in the Northern Territory allow human rights issues to be explored not only as a separate document but also as an inclusion in the actual NT constitution.\(^9\)

The chair also noted the alternative view, that the constitution should be separate from human rights matters. The constitution should simply set the powers of the Parliament, the Executive and the Judiciary but not dictate specific content or direction of laws.

One does not need to have a view on the merits of the arguments about incorporating rights into the NT constitution. The fact is, the matter of a Bill of Rights has not been settled in Australia and, despite support within the present government for a legislative Bill of Rights, there is no bipartisan support for the Bill. There is no major party support for a constitutional Bill of Rights.

\(^8\) The 7th State and Human Rights – 18 August 2008 – National Community Legal Centres Conference
\(^9\) ibid
It is unlikely that the Commonwealth will allow the NT a privilege it is not willing to grant its own. Similarly, there is no sentiment in the Commonwealth to incorporate into the Commonwealth Constitution sentiments from the UN Declaration of the Rights of Indigenous Peoples, accepted by the Rudd Government.

The Howard Government rejected the Declaration (along with USA, Canada and New Zealand) and the current Opposition has not changed that view. Without bipartisan support it will not happen in the Commonwealth. The Commonwealth will not allow the NT to experiment with such a change to its constitution.

**Representation**

On the matter of representation, there has been a contradictory gambit by statehood proponents – equality with the states in Senate representation, but a special deal on the House of Representatives.

At present the NT has two Senators and two Members of the House of Representatives. In the recent past it has had two Senators and one Member. The formula in s.24 of the Commonwealth Constitution requires that there be an apportionment of the number of House of Representative seats in each state based on a population quota. It is uncertain if this apportionment system can be varied for a new state under the ‘terms and conditions’ power.

Politically, it is unlikely that the Commonwealth will allow a variation, given the small size of the NT population, and the population projections suggesting no change for many years in the proportion of Australians living in the Territory.

Because of the nexus provision (s.24 of The Constitution) should the Northern Territory obtain more Senators, the House of Representatives membership would need to grow to keep the required balance of approximately twice the number of Senators.

It is unlikely that the Commonwealth government would welcome the many additional politicians into the Australian Parliament that equality of Senators generates in the House of Representatives. The creation of more political positions is likely to be unpopular with the electorate.

Two Senators and two members of the House of Representatives is probably as good as it gets.

**Aboriginal issues**

Aboriginal issues may be the toughest of all in which to manage expectations.

Generally, Aboriginal interests have been in favour of Commonwealth control, especially with Labor in power in the Commonwealth and CLP in power in the Territory. Those views could change post intervention, but the default position is not favourable to statehood. The price of Aboriginal consent appears to be some form of constitutional recognition, tantamount to a treaty.

In 1998 the Land Councils declared their opposition to statehood until such time as the NT Government negotiated Aboriginal interests. In 1998 the Central Land Council organised a conference at Kalkaringi in anticipation of the referendum. From that convention a statement known as the *Kalkaringi Statement* was issued. Following that convention another was held at Batchelor, arranged with the participation of the other Land Councils. The result was a combined document called the *Indigenous Constitutional Strategy*. 
The document states,

*The Aboriginal Nations of The Northern Territory are governed by our own constitutions (being our systems of Aboriginal law and Aboriginal structures of law and governance, which have been in place since time immemorial). Our constitutions must be recognised on a basis of equality, coexistence and mutual respect with any constitution of the Northern Territory.*

The document also notes the Aboriginal peoples represented will,

*Withhold our consent (to statehood) until there are good faith negotiations between the Northern Territory Government and the freely chosen representatives of the Aboriginal peoples of the Northern Territory leading to a Constitution based upon equality, coexistence and mutual respect.*

The document outlines a range of issues that Aboriginal people considered vitally important in the context of statehood in 1998.

Many Aboriginal people see statehood as an opportunity to realise some long held goals in terms of recognition of traditional laws and culture.

Such recognition has not been resolved in the Commonwealth. Following my earlier arguments, it is doubtful that the NT will be the crucible for such an experiment.

**Conclusion**

If, in order to satisfy various constituencies, Territory politicians present the Commonwealth negotiators with a wish list, I believe that the statehood bid will once again fail.

Territory politicians will need to convince Territorians to support a very disciplined and modest package. That is a difficult task. My advice is to undertake that task, gain statehood under the Commonwealth, and build from there.
Title: ‘100 Years On: Melancholic Sovereignty or, Letting Go of the Holy Grail.’

First, I would like to thank The Northern Institute at Charles Darwin University and the Northern Territory Library for inviting me to present to you this morning on the question of Sovereignty in the shadow of the 100 year anniversary of the transfer of the Northern Territory, with its adjacent islands, from South Australia to the Commonwealth via the Northern Territory Acceptance Act 1910; and in particular I’d like to thank Daniela Stehlik and Katrina Britnell for organizing this and other events associated with my visit. It seems fitting that the Northern Institute would emerge so close to the 100 year anniversary. But it may seem surprising that a hundred years after this transfer, we would still be discussing the prospects of securing a form of political sovereignty for the Northern Territory.

After all, in the imaginary of liberal democracies political sovereignty is something like the Holy Grail, the possession of which bestows on the holder miraculous powers. His word is law—or hers. But to find it, to hold it, and to secure it, the seeker-hero must prove worthy. And the trials are long and arduous, usually narrated in the form of an epic, though they can also be narrated as farce (think here of Monty Python and the Holy Grail). To whom, or what, one is proving herself worthy is not clear at times because the source or ground of political sovereignty is not clear. Does one gain political sovereignty based on market prowess—her ability to deliver economic wellbeing—or moral sense—character irrespective of this delivery of goods and services—or her sheer might—ability to create and slay enemies? The mortgage crisis, various sex scandals, the notorious children overboard: each is an archetype of these different grounds of political sovereignty.

Whatever the ground of political sovereignty might be it is clear that while some might prove themselves worthy of the chalice, others are publically shamed by their failure, said to have been slain in the quest by one or another vice, temptation, or quality. That someone is assessing them, has the power to designate their failure is, of course, in and of itself, a sign that they have failed to achieve sovereignty. For some the ability of the Commonwealth to dissolve the NT Parliament and to implement laws and impose decision on the Territory, such as the Emergency Response (the Intervention) and the storage of nuclear waste material smacks of a moral judgment of the nation on Territorians moral capacity for political self-determination. The ability of some to say that others have failed to prove themselves worthy of the Sovereign Grail is nowhere better illustrated than the four year-old so-called emergency intervention in Indigenous affairs in the Northern Territory. To a degree that shocked many and roiled longstanding political and social alliances, the federal government and various public pundits announced that indigenous people in the north had failed to prove themselves worthy of self-governance and self-determination, key synonyms for political sovereignty, though, as we know, Indigenous Australians were never recognized as having sovereign rights. As numerous critical Indigenous theorists have noted, to be truly sovereign, Indigenous people must be the ultimate theorists and arbiters of the grounds of their social lives, including what a “territory” is in relation to the kinds of lives that surge through it. Leave aside true
sovereign power; even the limited concept of “dependent domestic nation,” developed across a series of US Supreme Court cases from 1823 to 1832 and generally known as the Marshall Trilogy, was never deployed here.\(^1\) Even the concept of “native title,” acknowledged in the Mabo decision, located the sense and power of “native title” within Anglo-Australian sovereign law not outside it. In other words, as numerous legal scholars have noted, native title is not a sovereign Indigenous term. It is a term that further erodes Indigenous sovereignty. As a result whatever limited and fragmented powers of self-governance that Indigenous people in the Northern Territory had (so called “self-determination”) were always liable to being taken away. And, perhaps more importantly—and strange!—as the federal government took away what Indigenous people never truly were given, the government and a supporting public chorus has continued to describe this spectral failure as a moral failure of Indigenous people.

And so it might also appear ironic to some that the 100 anniversary of limited Territory self-governance should come so close to the most dramatic upheaval in state-Indigenous affairs in three decades and that we are discussing the justice or injustice of Northern Territory sovereignty at the precise moment that Gillard government is deciding whether to continue to limit the rights of Indigenous North Australians on the basis of a set of highly suspect oppositions (tradition versus modernity for instance). Some might argue, it is true, that the lack of local power to stop the federal Intervention was a problem of the externality of sovereignty powers such that the Commonwealth can bypass Territory governance when it comes to Indigenous people. But even if the Northern Territory were sovereign, and even if it had prevented the Intervention, these facts would hardly have made Indigenous people or communities sovereign or self-determining.

The uncanny nature of this talk about political sovereignty is not exhausted, however, by the specifics of settler nationalism. All of our heated, and not so heated, discussions about how a self-determining Territorial government might fit into the Australian federal system and how this fit might benefit or impair Indigenous or other people living here presupposes that state sovereignty continues to provide some sort of self-determining political will—or, to put it another way, that the nation-state has political sovereignty that moves according to its own logic and authority and operates independent of other forms of social orientation, organization, and governance. To get a sense of what I mean, one can think of Thomas Hobbes’ famous portrait of the Leviathan—the King as political sovereign, sword and specter raised over a set of framed social domains—aristocracy, church, manor, and people. The monarch is sovereign and his rule operates independent of any condition outside himself even as all that defines society is inside him. How alien is this portrait of political sovereignty not merely among my Indigenous friends and colleagues but among the supposed inheritors of the Western political concept and form?

The Northern Institute captures on its home page the truly uncanny nature of the dream of political sovereignty in contemporary economic and social conditions. There the Institute foregrounds the strategic relationship of regional northern Australia to its neighbors in South-East Asia rather than, or alongside—or perhaps in equal importance—to other regions of Australia. In so emphasizing the external logic of its internal mandate, the Institute reflects a much broader Australian economic shift from a focus on the US and Europe to China and the effects of this shift on political decisions about the form, context, and appropriateness of human rights, immigration policy, terror legislation, and economic organization. In other words, the Northern Institute rightly reflects the fact that the governing logic and rational of scholarly and political space has

\(^1\)Johnson v MacIntosh (1823), Cherokee Nation v Georgia (1831), Worcester v Georgia (1832)
been distended. It is outside itself. And yet, still we hold onto a notion of political sovereignty as distinct to other forms of sovereignty. Why do we? Should we?

Part of the problem, and what I want to address this morning, is that we use the term sovereignty to cover numerous conditions and states, rapidly moving between forms and modes of sovereignty such that we never must designate exactly what we are talking about. So what I would like to do this morning is simple enough. I will walk through, in a very summary way, some of the critical literature on the normative concept of political sovereignty in relationship to market, moral, and cultural sovereignty. I will then discuss contemporary understandings of the factual relationships between political, market, and cultural sovereignty. I want to end, however, in a somewhat different vein and register.

I see that the advertising now says I am part of a policy dialogue. I fear that I have no immediate policy statements today. I have worked in the Top End now for thirty years and closely with Indigenous groups who lives stretch from Darwin down to the Wadeye Community. And I have worked on several land claims, native title claims, and sacred site registration. And I am currently working with—and a member of—the Karrabing Indigenous Corporation that is seeking funding for a transmedia project. But I also believe—and I believe this firmly—that no policy statement is possible until we have a clear understanding of what the policy rests on. And, I know that I am first and foremost a scholar. And it’s to that I’ll turn.

Let me begin with a series of simple questions. What is sovereignty? How do we conceptualize what sovereignty is and to what condition of being it refers. Are there many or few kinds of sovereignties? Is there a natural hierarchy of sovereignties such that different kinds of sovereignty fit into each other like a set of Russian babushka dolls? Or does each sovereignty claim have its own singular domain and no nesting, only antagonism, is possible?

The basic concept of sovereignty is not that difficult to explain—and when we remain at a very superficial level sovereignty appears to be a universal aspiration. Most critical theories of sovereignty as a general principle describe it as a quality of self-authoring authority. We can call it “self-determination.” Here we see the long arm of Aristotle on the imagination of the West. The self-authorizing self is a variant of Aristotle’s unmoved mover—he, or she, or it that moves others but is not moved by any other. It is the basis of Kant’s differentiation between the categorical and hypothetical imperative, the former being unconditioned command done without consideration of ends and without question of means. And it is vitally important to understand that once this idea that there was and should be an unmoved mover (what I have elsewhere called the autological subject) became a dominant social imaginary and this this unmoved mover was equivalent to God and the Good, then all moved movers were immediately morally suspect. Thus the refusal of the Commonwealth—writ nation—to give Territorians self-determination is a moral as well as a political slight. As it is when Territorians claim that Indigenous people are not mature enough for self-determination.

The kinds and modes of sovereignty depend on the referent of the “self” of self-authorizing and self-determining. The self might be monarch, state, market, culture, individual, or corporation. In absolute monarchies, for instance, political sovereignty is absolutely unconditioned, absolutely self-authoring, absolutely above and determining of every other form and mode of social and individual organization. In the liberal democratic tradition, the authorial relationship between kinds of “selves” is always in tension. Certain self-authoring actions are reserved to the state, others to the individual—a simple contrast, for instance, can be drawn between the state’s monopoly on the use of violence and individual’s monopoly over personal intimacy. But, it is a simple contrast that conceals as much as it reveals since in certain contexts, the people have the right to take up violence and the state has the right to persecute intimacies. Nevertheless, in the
liberal democratic tradition the fantasy of sovereignty as a form of self-authoring—the right to author one's own future; or at least to not to have this future authored by someone else after adulthood—remains remarkably persistent, nay, it remains a holy creed. And this fantasy has migrated into anything that can be imaged as self-like. Let me mention three very recognizable kinds of sovereignty—economic, political, and culture.

When talking about market sovereignty there is really no better place to start than The Wealth of Nations. In The Wealth of Nations, Adam Smith argued that the market should be allowed a sovereign existence independent of the state. In a passing metaphor, Smith embodied this sovereignty with invisible hands, anthropomorphizing the market as a means of defining its independent life. Thus Smith saw at least two different modes of sovereignty—political and economic. And, if we merely focus on The Wealth of Nations, it would seem that he conceptualized the relationship between these two modes of sovereignty not as nested types so much as independent domains. We have come to understand this kind of relationship between state and market as laissez faire capitalism. The state leaves the market to operate on its own principles.

In the 1930s, the German jurist Carl Schmitt would come to understand political sovereignty as necessitating a differentiation of its ground and referent from other kinds of “sovereign” forms. In other words, political sovereignty rested on the absolute distinction between social domains and forms of judgment and legitimacy. For instance, the Church’s social domain is religion and its forms of judgment and legitimacy lie in matters of spiritual being and ends. Art’s domain is the aesthetic and its judgment and legitimacy resides in matters of the beautiful and sublime. The market’s domain is the economy and its judgment and legitimacy resides in the enhancement of wealth and life. Thus in his highly influential and controversial text, The Concept of the Political, Schmitt defined political sovereignty as the ability to define friend and enemy. What is quite hard for us to get our heads around—and I will suggest why it is hard in a moment—is that this designation was not made for economic, religious, or moral reasons. If it were it would be qualified by forms of judgment and legitimacy outside its domain. Instead these designations were made for purely to maintain state power. You should not be surprised to learn that key members of the second Bush administration were deeply influenced by Schmitt by way of Leo Strauss.

The concept of the political as a territorially defined self-authoring power has its roots not merely in Aristotelian ontologies, but on specific histories of conflict in Europe and perhaps most specifically the Westphalian system set up in 1648 and establishing the concept of territorial integrity and internal rather than external rule. (And as an aside, just to get our historical dating ducks lined up in a row, Westphalia was about 130 years before Smith and Kant would pen Wealth of Nations and Critique of Practical Reason, 1776 and 1788 respectively. So one can get a glimpse of the co-constitutive nature of world and thought being lodged ever deeper into institutions and subjects.)

During the same period that Schmitt was formulating his ideas about the concept of the political, modern American anthropology, deeply influence by German philosophies of language and culture—think here of Herder and von Humboldt—was consolidating a notion of cultural sovereignty—better known through the concept of cultural relativism. According to the new anthropological creed every society had a distinct, self-referential form of cultural sense and understanding. The self gains itself through these cultural forms and practices rather than predates it. It is because a person’s identity, her very core being, is constituted within a distinct cultural structure that the Canadian philosopher Charles Taylor, influenced by Herder and American cultural anthropology, argues the denial of cultural recognition does such grave harm because a person’s identity. Before the state decides to declare a cultural minority the enemy, it must justify this harm based on the reason of culture.
So here we have three kinds of sovereignty that seem to confront each other even as they seem nested within each other and to be worthy of dignity each must demonstrate that it is indeed an unmoved mover. But there are also nested forms of self-determination. Some seem moral self-determination as the pinnacle of sovereign being, others cultural. And some argue that various kinds of political self-determination must reside in a Babushka relationship. Gary Johns for instance argued in this room that NT self-determination should come first and Indigenous self-determination second.

The trouble with starting and ending with this kind of summary of the kinds and modes of sovereignty is that these are arguments not descriptions, norms not facts. They are meant to intervene and shape the world rather than be an account of the diverse and incommensurate institutions actually pulsing through the world. Carl Schmitt, for instance, was not describing the actual organization of state and market in early 20th century Europe, but making an argument about how it should be organized. In fact, *The Concept of the Political* was an indictment of the parliamentary system of Weimer Republic and Western Europe in general.

The difference between approaching the problem of political, economic and cultural sovereignty factually rather than normatively becomes clear when we try to differentiate “neoliberalism” from laissez-faire liberalism and Keynesian liberalism. The term “neoliberalism” is used in all sorts of ways. In its most precise sense, neoliberalism refers to the transformation of state politics and market relations that occurred after the end of the Bretton Woods agreement. In general Keynesians believed (and Keysesians were behind the Bretton Woods agreement—and still believe—that because capitalism is subject to periodic unemployment crises, it should be regulated by state and international monetary and fiscal policy. A central pillar of this regulatory regime was the redistributive compromise among state, corporation, and labour. Bretton Woods collapsed in the 1970s, assaulted by neoliberals who argued for the privatization and deregulation of state assets, the territorial dispersion of production through subcontracting, and a shift in tax policies that favoured the rich. Central to neoliberal thinking is the idea that the market naturally pays people what they are worth—and that bargaining power organized through extant institutional arrangements should have nothing to do with income distribution. Indeed, so the argument goes, “intervening” in the market through group bargaining distorts fair distribution based on the ultimate rationality of market to pay people what they are worth. This central idea has led to most dramatic disparity between super rich, middle class and poor on modern record.

Now it is important to remember that as much as we can say neoliberalism followed Keynesianism, neoliberalism was not an event like the setting of the sun at the end of the day is an event or like a firecracker going off is an event. Neoliberalism is an idea that is made factual through a complex and uneven set of social struggles within the liberal diaspora that makes not one thing but many often, incommensurate things and relations. Ronald Reagan’s assault on the Professional Air Traffic Controllers Organization in 1981 and Margaret Thatcher’s confrontation with the National Union of Mineworkers in 1984–85 occurred more than a decade before the Australian Prime Minister John Howard confronted the waterfront unions in 1997. Likewise, a formal relationship among state, corporations, and labor came much earlier in Europe than Australia. In Australia, this formal compromise came with the 1983 Prices and Incomes Accord (colloquially known as “The Accord”) even as both the Hawke and Keating governments instituted key pillars

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2 In 1944, the leaders of Allied forces met at Bretton Woods Hotel in New Hampshire to plan for a joint postwar economic policy. For a general discussion of neoliberalism, see Foucault, *The Birth of Biopolitics*; Wallerstein, *The End of the Worlds as We Know It*; Harvey, *A Brief History of Neoliberalism*; Palley, “From Keynesianism to Neoliberalism.”

3 For a discussion of the effects of the arrangement on Europe, see Eichengreen, *The European Economy since 1945*.
of neoliberalism—privatization of state corporations, floating the currency, and dropping trade barriers.⁴

Nevertheless, neoliberalism as idea and struggle, as disparate normative goals and often incommensurate, institutional arrangements, has powerfully reorganized the relationship between political and economic sovereignty. Here we might turn to College de France lectures by the French philosopher of history, Michel Foucault. Foucault argued that a distinction must be made between laissez-faire liberalism and neoliberalism. Neoliberals did not merely wish to free the economy from the Keynesian regulatory state; they wished to free the truth games of capitalism from the market itself—the market should be the general measure of all social activities and values.⁵ In a recent New York Times Book Review essay, Tony Judt asked how and why liberal democracies like the United States, Britain, and Australia stopped assessing social programs and actions on the basis of political philosophy and instead restricted themselves to issues of profit and loss, and languages of efficiency, productivity and benefit to gross domestic profit.⁶ In short, political sovereignty is no longer sovereign in the sense of having its own reason and domain. It’s rational has been colonized by a specific kind of economic reasoning.

But even this reading of the history of liberalism—and ipso facto the history of political sovereignty—is misreading. Amartya Sen, and others, have reminded us that even the father of laissez-faire capitalism, Adam Smith, did not in fact think that the market operated independent of the people who operated it. And he did not think that the people who engaged in the market could operate according to market principles alone. Adam Smith wrote two books, after all, The Wealth of Nations and Moral Sentiments. And it was in Moral Sentiments that Smith outlined the necessity of producing morally minded the basis of which is not economic rationality by sympathetic spectatorship. The sympathetic spectator forms a copy of an agent’s suffering in her imagination in such a way that “we enter as it were into his body, and become in some measure the same person with the agent” (Theory of Moral Sentiments, p. 9). The ability to cultivate this kind of sympathetic spectatorship cannot come from the market since the market depends on considering the other as mere competitor.

So what do we make of all this? I have no real policy recommendations by way of conclusion. If I did I would be a politician not a scholar. But I do have three concluding points—thoughts really—that might be pertinent to whatever policy recommendations do arise.

They are:

1) Indigenous people never had self-determination;

2) the Indigenous people that I have known do not conceptualize “self-determination” in the same way as these western ontologies. But this difference might be more relevant to the task at hand for spaces like the Northern Territory than less relevant. They might be ahead of Territorian time rather than, as is popularly claimed, behind as primitive to modern;

3) the Northern Territory can never be self-determining because that horse has long left the paddock. Thus it can only either mourn its loss or take on a melancholic fixation;

⁴ Chapman, “The Accord.”
⁵ Even if we wished to differentiate between capital and the market, as does Fernand Braudel, it is increasingly unclear what forms of life are becoming explicit markets. See Braudel, Civilization and Capitalism.
First, Indigenous people never had self-determination. And to continue to claim that they did and that they can then be judged as failing to have practiced-self determination properly will deform our policy response. We can return to Gary Johns who has come out quite strongly on the Emergency Intervention. I'll quote from his comments on Counterpoint on 2 May 2011. This is what he said: “Now, I don't think that the policy setting of the last 40 years, which I'll call, broadly speaking, Aboriginal self-determination where Aborigines run their own organizations and live on their own land can deliver the happiness and peace that I would wish them. I'm not here to judge Aborigines, but to tell them of the consequences of their actions. And I'm here to tell them that the dream of their forebears, up until the 1960s, was to achieve equality. And most have. But there's a group of Aborigines, mainly those living in remote areas, who have not achieved equality and under current policy settings I think are most unlikely to ever achieve equality.” Now, it is good that Johns titled his book, Aboriginal Self-Determination, The Whiteman's Dream, because his description of the history of Indigenous policy is indeed a Whiteman's fantasy.

Even if we believe that liberal cultural recognition indexed some significant transformation of liberal governance of difference we might ask how completely this change of heart was institutionalized. After all, social programs were underfunded and sporadically funded. Certain groups had access to power-laden spaces of Land Councils, others didn’t. Different programs enshrined cognate but incommensurate forms of ‘culture.’ These incommensurate and partial political fields of cultural recognition provided significant room for indigenous people to manoeuvre within the manoeuvres of late liberalism (sometimes for the benefit of broad groups sometimes to the benefit of small groups). But these incommensurate and partial fields also continually disrupted the socialities of Indigenous lives, sorting and resorting people into different kinds of piles: traditional, historical, too cultural, not cultural enough, outside the common usage of culture. And the same thing can be said about the Intervention. Intervention programs are underfunded and sporadically funded. What funding actually appears is disproportionately distributed so that significant amounts promised for housing, schooling and health are diverted to assessment studies, administrative overhead, and policing. Moreover, different programs enshrine cognate but incommensurate forms of culture.’ Politicians and academics can say two things at the same time—that the continuity of traditional culture is causing the collapse in Indigenous life and that traditional culture has collapsed from the hazards of Indigenous life. And older forms of cultural recognition remain on the books making the field of manoeuvre ever more complex and hazardous for Indigenous actors.

The problem is that everyone knows this. If we sit and ask ourselves, really, what were the facts on the ground? Where did the money go? What were the contradictory mandates that striated communities? Most people who worked in or around Indigenous communities would be able to give a fairly reasoned answer that captured the chaotic nature of the period. And as the work of Tess Lea and others who attend to the nitty-gritty of policy have shown this is hardly a state secret. And yet, this fantasy of successful or failed sovereignty—sovereignty as the fantastic ability to self-author—remains a supremely powerful desire and accusation, the horizon of our aspiration and the centre of our melancholic disposition.

Second, Indigenous people that I know do not conceptualize the worlds as determined by the problem of self-determination even as they insist that they should be boss of themselves. When we approach it at a very superficial level, sovereignty appears to be a universal aspiration. This superficial universality was nicely demonstrated a couple of

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weeks ago when I was driving from Belyuen to the Mandorah wharf with some Indigenous friends of mine. We were attending the funeral of a local young man who accidentally killed himself when he crashed into tree after a long night of drinking. In the front seat with me was an old friend of mine, a young woman who had been working on an all indigenous team conducting a survey of Top End communities about the impact of the Intervention in their and their families’ lives. She was telling me about her work, and in the course of the discussion, I mentioned that I had to give this talk—I actually mentioned that I had to write this talk so that I could give it. When she asked me what sovereignty meant, I said it was usually used to indicate self-determination. I first put it in a negative formation—no buddy boss of that person, or nobody boss of that thing, like China not boss of Australia. But it was also easy enough to put it in a positive form—like that man or woman or government is boss of himself. “So are Aboriginal people sovereign? Can you say that?” my friend asked. “What do you think?” I asked. “I don’t think so; should be, but not like today.”

But in what sense is my friend’s normative allegiance to a notion of sovereignty the same as the kinds of normative ideas of sovereignty I have been discussing? The answer is: not so much or not unless we rewrite this history from her perspective. The strong notion of self-determination is far more complicated for the people I have known well. Scratch the surface and you will find that my friend—as well as her parents and parents’ parents—never thought a person was ever or should have ever been a self-authorizing individual at heart even as the opposite of being an individual at heart was not being a mass cultural robot. I think this is simple enough to understand. Now, it is true and important that I have for a very long time now, hung out with hunters. Thus there is a huge emphasis on studying people, animals, and places (the broad geontology of the world) because if you need to find them, for one reason or another, you need to know their tendencies and you can only know their tendencies by embedding them ever more deeply in a complex and emergent set of social relations, what is often summarized as kinship, ritual, clan, and gender statuses that result in a set of particular talents, desires, and tendencies. But the environment also has tendencies, as do creeks, animals, and sandbanks. I have called these theories, geontologies, which my computer continually “corrects” as gerontologies. By geontology I mean a theory of geographical being wherein the usually definition of sovereignty as a quality of possessing supreme, independent authority over a geographical area is conserved and contorted through a different understanding of organic and inorganic vitality and a different set of ethical obligations and practices that come with this different understanding.

How different is this understanding of the self than western political ontologies in which the goal is to deracinate the subject from any and all social qualities such that each person stands alone within and from herself. The parvenu, spontaneous generation, the genius: all of these gain their shine from their ability to be the Aristotelian unmoved mover—that which determines itself without condition.

They are deeply sensitive to the conditions and tendencies of beings and extremely sensitive to claims of sovereignty. The imperative that a person, group, and place should be boss of itself and the imperative that person, group, and place study others as complex and emergent knots of kinship, ritual, clan, and gender statuses that result in a set of particular talents, desires, and tendencies exist simultaneously. I do that to you. You do that to me. And doing that to each other deepens this strange simultaneous conditioned sovereignty—note not conditional sovereignty.

Third, the horse has long since left the gate when it comes to political sovereignty in a strong sense. Even where we might say political sovereign continues to reside, namely in the geographical arrangement between state and territory, its justification and legitimacy is firmed grounded in the universal extension of market sovereignty. And, given the global arrangement of the market the territoriality of market sovereignty and the
territoriality of state sovereignty are increasingly misaligned. And, here I can return to the prescient nature of the Northern Institute. What kinds of arrangements are more apparent within this dependent condition? without accepting this melancholic and failure to think about how we are all already in a web of mutual economic, political and social obligation. No clearer than the dependent state of NT on Indigenous. When we see that political sovereignty is no longer sovereign, we begin to understand a certain melancholic disposition within the debates about Indigenous sovereignty and the reasoning behind the viciousness of contemporary discussions. And I do mean viciousness—having the quality of immorality and depravity or ascribing the qualities to others. And I don’t only mean the vicious assaults on individuals’ characters say in the recent public attach and counter-attach between Larissa Behrendt and Bess Price. I am talking even more about the freedom people now seem to feel ascribing broad negative character traits to entire populations and ways of life. What I would like to suggest this morning is that our current discussions of political sovereignty are melancholic in a specific sense. As Ility Ferber has observed, in Freud’s 1917 essay “Mourning and Melancholy”, two mutually exclusive responses to loss are described—mourning (trauer) and melancholia (melancholie). While both the mourner and melancholic begin with a basic denial of their loss and an unwillingness to recognize it, the mourner soon recognizes and responds to the call of reality. The mourner lets go of the lost-loved object and liberating itself and opening itself to new forms of attachment. The melancholic remains sunken in his loss, unable to acknowledge and accept the need to cleave and in a self-destructive loyalty to the lost object, internalizes it into his ego, thus furthermore circumscribing the conflict related to the loss and externalizing the rage of loss onto others.

Perhaps then, rather than sovereignty per se, political, economic, or cultural, we might ask, is the dream of self-authorship the only dream and is the opposite of this dream only a nightmare. To be the mover or not—is that the only question?

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FURTHER STATEHOOD RELATED PRESENTATIONS

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory

National Press Club Speech presented on 20 April, 2011 at the National Press Club, Canberra ACT. This was a joint presentation with Jon Stanthorpe MLA, Chief Minister of the Australian Capital Territory. This speech was copied from the Northern Territory Government Newsroom webpage (www.newsroom.nt.gov.au) and edited slightly for easier reading.

Title: ‘Territories claim their right to govern - Australians are ready, willing and able’

Thank you.

It’s great to be back in Canberra-- and a real privilege to be here at the National Press Club today. This place has hosted many great leaders and many prominent and influential public figures over the years and I’m very grateful for the opportunity to take the stage today and talk to you about Australia’s other great Territory!

Like many Australians, I suspect most of you here today will already have formed a view or an impression about the Territory, and if past experience is any indication, your views and impressions will all be very different.

Some of you will think of us as a remote Northern frontier, a land of vast open spaces and inhospitable terrain. Some of you might think of the bombing of Darwin and Cyclone Tracey and the resilience and determination of our people to rebuild and forge a better life for themselves time and again. Others will think of the ‘Rock’– maybe even images of Oprah at the Rock -they will think of Kata Tjuta and Kakadu and some of the most precious and symbolic indigenous cultural sites in the land.

The list goes on – because to most Australians the Northern Territory is still something of a mystery.

But when I think of the Territory I think of a place of great opportunity – a place where you can come and build a new life for yourself and for your family - a place where you can live your dreams.

And I speak from personal experience.

I am one of the many, many Territorians who headed north to seek out new opportunities and build a new life.

It was 1983 when I left my job as a marine fitter in a mining camp on the very cold west coast of Tasmania and made the trek to the Top End.

The original intention was a working holiday but I ended up getting a traineeship, meeting my wife, having a couple of kids - and becoming Chief Minister.

Ok – so there were a few steps in between, and a lot of hard work along the way but it is a move I have never – for one moment – regretted because the Territory is not only a place of great opportunity; not only a place that rewards hard work and a go-ahead, can-do attitude; it is also a place where you can quite literally achieve anything.
And yes – we face some big challenges in the Territory and none bigger than spreading opportunity and prosperity across our towns and regions and to all our people.

But I’m an optimist – and I believe that the unlimited potential of the Territory and its people is our greatest asset - an asset that our Government is determined to encourage and nurture.

I want the Territory to be a land of opportunity – a land of opportunity for all.

And it is opportunity that drives our work in Government.

Today, I want to tell you more about the Northern Territory about our new, dynamic 21st century economy; about our strengthening ties to the economies of Asia and about the work we are doing to tackle Indigenous disadvantage and the steps we are taking to spread opportunity to our all our people in all our communities across the Territory.

In short, I want to show you why the Northern Territory should stand proudly and independently in our Federation and as equal partner in our great nation.

But first to our economy.

**The Economy**

The Northern Territory is currently experiencing an employment miracle.

Over the past year, unemployment in the Territory has been at its lowest level since records began and we have recorded the lowest unemployment rate in Australia for 18 months in a row. In fact, the current unemployment rate of 2.4% is half the national average and well below what most economists consider ‘full employment’. And – importantly – we have achieved this at a time where our labour force participation rate is close to the highest in the nation.

These days, Territorians understand that if they want a job, they can get one which, of course, explains why they are entering the workforce in droves. Like other jurisdictions around the nation, we felt the hit of the GFC - but in reality it was only a shudder. It was a reminder to all of us about how strong and robust the Territory economy is today.

Economic growth has averaged around 4.5% annually for the past six years. The resources boom has been integral to this growth and to our development and with projects like the $12 billion Inpex gas project coming to Darwin, most forecasters predict that economic growth will remain strong in the Territory. For example, Access Economics predicts annual economic growth of 3.9% for the next five years.

Given our strong, resilient and growing economy, it is unsurprising that business confidence is high and that business confidence in Government is the highest in the country. The Territory is growing up… it is coming of age… and we have well and truly entered a new and exciting era. We are strong, independent and increasingly confident – and we are ready to face the challenges that lie ahead. But we are not resting on our laurels.

**LNG and jobs**

In terms of our economy, we know that the resources boom, as we’ve known it, will not sustain us indefinitely. We have ridden the sheep’s back – we’ve had the mining boom – and now we are at the foot of a new LNG wave

LNG will mean a cleaner, more efficient energy source - an energy source that will make Northern Australia the engine room of the nation’s economy. In the next five years – just
in Territory waters alone – companies are forecast to spend around $1 billion on exploration alone. And that is outside of the projects already planned to come on-line including the Inpex-Ichthys LNG plant – which will employ around 3000 people during construction and a further 200-300 for the life of the project.

Projects like Inpex are transformational – and Northern Australia is set to reap the rewards. And it’s not only the Inpex project in Darwin. There’s Gorgon in Western Australia and Gladstone coal seam LNG in Queensland to name a few. These projects offer immense economic opportunities for the North – but they also throw up some big challenges. Investments like these require strong and decisive action from Government, which is why I am working with Premier Bligh and Premier Barnett to pull together a cross-government task force to manage this growth now and into the future.

We need to work together to ensure we aren’t cannibalizing each other’s workforce as more big projects emerge. The bottom line is that stable and secure economic growth requires a collaborative approach – and I know that both premiers are as eager as I am to ensure the sustainability and integrity of our respective workforces. These new projects throw up other challenges as well. For example, there is also an underlying social issue we need to grapple with – and that is ensuring we don’t lose workers in crucial frontline sectors like teaching and nursing. We need to make sure we have a strategy in place that stops people jumping ship from our classrooms, hospitals and businesses - and taking the big pay packets on offer to work on these projects.

And we also need to ensure that the community still has access to a skilled and accessible workforce and access to the people who have played such a vital role in building the Territory and creating one of the nation’s great lifestyles. We will work with business, with the unions and with schools and trade training centres to make sure we create the right pathways into these new 21st Century jobs. And as someone who has come from a trade background, I am really passionate about making sure we have good, highly paid, skilled trade jobs in the Territory. These are the kind of nuts and bolts issues that we need to work through together – and they will be high on the agenda for the new cross-government task force.

LNG will take the Territory economy to another level – it will take job creation to another level and I am determined that all Territorians will benefit and reap the rewards of this new, exciting era of prosperity. While LNG is set to drive a new era of prosperity in the Northern Territory it is our strong ties and maturing relationships with nations to our north that will sustain our economy – and the national economy – for the rest of the century and beyond.

On the doorstep of Asia

I said earlier that Australians have many different impressions and views of the Territory, and I know that for many our proximity to Asia would rate highly. Yet it would surprise many Australians to learn that Darwin is actually closer to places like Singapore and Jakarta than it is to our own capital here in Canberra. We are quite literally on Asia’s doorstep – and as Australia’s gateway to Asia, and Asia’s gateway to Australia, we have a potential customer base in the hundreds of millions. And my Government has worked hard to build strong trade, development and cultural relationships with our northern neighbours. For example, last year we had the honour of hosting the Vice President of China and I believe it’s a growing testament to our relationship that on a whistle stop trip that included meeting with the Prime Minister and former Victorian Premier John Brumby Vice President Xi Jin-Ping also made time to drop into the Territory for a little ‘croc spotting’.
Crocs aside, his visit proved productive. As a direct result of our discussions, the Chinese Government this month gave the green light to the establishment of a Confucius Institute at Charles Darwin University. The Institute will play an important role in building even closer ties between the Territory and China.

In the Territory we are well and truly on the front foot when it comes to strengthening our ties with our northern neighbours. For example, our $14.4 million four year Bringing Forward Discovery initiative, has helped promote the Northern Territory as the preferred destination for exploration through strategies such as the provision of new geoscience data for explorers, and our China and Japan Mineral Investment Attraction Strategy, and it is reaping dividends. The latest Australian Bureau of Statistics Mineral Exploration Expenditure figures show that the Territory set a record spend last year of $166.7 million – that’s up 12% on the $148.4 million spent in 2009. Indeed, during the GFC in 2009 the Territory was the only jurisdiction to increase exploration expenditure, while the rest of the country suffered significant drops. That says a lot about our proactive approach to business in the Territory and a lot about the strong and respectful relationships we have developed with our Asian neighbours.

**Tackling Indigenous disadvantage**

Of course, a strong and resilient economy is not an end in itself. A growing economy allows governments like ours to invest in the infrastructure and the services that their people need and demand. It means having the capability to spread opportunity and prosperity across the board. And for us, that means being able to tackle indigenous disadvantage and forge a better life for all our people. And while the problems we face are complex and difficult, our Labor Government has always been determined to turn things around and make a real difference in towns and communities across the Territory.

Today I’d like to highlight a few areas of genuine achievement that may not make it on to your TV screens or into weekend newspapers down south. In partnership with the Commonwealth Government, and in particular with Minister Jenny Macklin, who I would like to acknowledge today for sharing my concern, determination and drive to ‘close the gap’, and working jointly to achieve real improvements in our bush communities. As a Labor Government, the areas of health, housing and education will always be central to much of our work. For example, in the area of health we have seen some real improvements in recent years including:

- A three year improvement in the life expectancy of Aboriginal women;
- The Indigenous infant mortality rate has fallen by 35 per cent since 1996;
- Anaemia rates for Aboriginal children have reduced by 20%;
- Cervical cancer rates have fallen by 61% since 1991.

There has also been a dramatic decline in mortality from cervical cancer, falling by 64% in non-Aboriginal women and by a staggering 92% for Aboriginal women since 1991. And for patients on Renal dialysis, survival rates are now equivalent to the rest of Australia – that equates to an improvement of seven years. Put that in the context of our starting point, coming to office – where the CLP had only put renal services in Darwin, Alice Springs and limited in Katherine. We have spent $40 million putting dialysis machines in remote communities for the first time. These are significant achievements and I’m confident we will see further improvements in the future.

In terms of housing – our government, together with the Commonwealth, has a $1.7 b. Remote Indigenous Housing Partnership Agreement, of which our $672m. Strategic Indigenous Housing and Infrastructure Program is a part. This is now in full operation but
– when it comes to housing – we face some major challenges. For example, building a two bedroom home for a family in Gumbalanya in the north or Hermansberg in Central Australia is not like knocking down a slab, then marking out a master bedroom, cinema room and double car port. There is no off-the-chart plan, there is no agent, there are no bitumen roads and very few, if any, retail outlets. I think many of you would understand the challenge of trying to get a tradie to fix your hot water or plumbing in Canberra or Melbourne or any of our major cities. It’s not like dropping into Bunnings after work to pick up a tap washer - and you know all too well the frustrations associated with that. Imagine the issues and complexities we face in remote bush locations. But we will overcome these obstacles and I’m confident our partnership with the Commonwealth will bear fruit in the years ahead.

If there is one area that I believe holds the key to unlocking indigenous disadvantage it is education which is why our Government is undertaking some of the most innovative and nation-leading approaches to education in the country. These approaches are based on partnerships – not just partnerships between the NT Government and aboriginal people but partnerships between our Government, the Commonwealth Government, aboriginal communities and the private sector.

Clontarf is a good example of this innovative approach to education – an initiative which uses the power of Aussie Rules to get kids to come to school and stay in school.

It’s important to note at this point that when our Labor Government was first elected in 2001, after 27 straight years of conservative rule, the number of Indigenous kids that had graduated from bush schools was zero. That’s right - not one kid. That says a lot about the priorities of the CLP in the Territory and their ‘do nothing’ attitude to education in the bush. Now, with programs like Clontarf, we are getting more boys to come to school, stay in school and finish school. This ground-breaking program is the result of a landmark partnership – with the funding being equally shared between our Government, the Commonwealth and the private sector. We have nine Clontarf Academies across 10 campuses with over 670 students from years 7 to 12. Last year we saw 36 young men finish year 12 through Clontarf and, importantly, 29 of those graduates have jobs or are in training right now. And I can report that this year we are on track to have 60 kids finish high school through the program.

In addition, our Every Child, Every Day strategy will tackle student attendance, especially in the bush. We are putting in place more Attendance and Truancy Officers, as well as new Infringement Notices of $266 for non-school attendance. We have introduced innovative programs like the Extended School Year initiative, which will ensure children in select remote areas can access schooling for an extra 10 weeks a year to make up for time lost due to weather and various cultural events. Our Beyond School Guarantee initiative will help students that finish year 12 with a good attendance and participation history get into the right career pathway if their initial choice after completing school does not work out. At the same time, we are working closely with LNG companies in the Territory to ensure that young indigenous kids, including many of these graduates, can access the jobs these new investments will generate. In fact, last week I was at the opening of the Larraokia Trade Training Centre, which was established in partnership with Inpex and the Larraokia nation. Already there are 300 kids enrolled there learning a trade. This is a concrete example of how these LNG projects can help make a difference to our kids by giving them the opportunity to build a rewarding career. We are strongly committed to establishing partnerships like Clontarf right across the Territory.

Discussions are underway already with mining companies about under-writing training in schools. A pathway to a job is critical in keeping indigenous students in school, and building partnerships with the private sector - town by town, community by community, child by child which will make a profound difference to future generations of Territorians.
We have a long way to go in closing the gap – but I am optimistic that we can build on the progress we have made so far. Of course, the work we are doing in our Indigenous communities will come to nothing unless we address the scourge of alcohol abuse. The figures paint a depressing picture. Alcohol consumption rates in the Territory are one and a half times the national average. Alcohol plays a part in 60 per cent of all our crime – and 60 per cent of all assaults in the Territory and around 40 per cent of our policing costs.

Indeed, if we are to close the gap, we need to turn off the tap to problem drinkers. The research is clear and the evidence is overwhelming – excessive consumption of alcohol is the key factor in the social, domestic and family problems experienced by so many people in our indigenous communities. That is why – last month – my Government introduced the toughest laws in the country around alcohol. These include a banned drinkers’ register that will use an ID system to prevent problem and banned drinkers from buying alcohol anywhere in the Territory. The new laws are tough and I make no apology for that. Decisive action is needed – because people caught up in the horror of chronic alcohol abuse not only neglect themselves, they also neglect their families and their kids. Tackling the scourge of problem drinking is the only way we can build better, safer and more productive communities and better lives for their people.

Conclusion

Today – in 2011 – the Northern Territory is a strong, independent and increasingly prosperous part of Australia. We are standing up and shaping our future in the Territory – a future we can look to with confidence and with optimism. We are quite literally coming of age – and I can say to everyone here today that we are ready and able to self-govern. After all, when Tasmania achieved Statehood in 1901 its population was recorded as less than 172,000. When Western Australia became a State in the same year its population stood at around 188,000. The Territory’s current population is over 230,000 – and it is forecast to be 320,000 by 2036.

The time is right for the Territory to stand on its own two feet – particularly now, as we mark 100 years since our ‘separation’ from South Australia. And our people, our neighbours and our trading partners expect no less.

Thank you.
Chief Justice Robert French AC
Chief Justice of the High Court of Australia
Former President of the Australian Association of Constitutional Law (2001-2005)

Kriewaldt Lecture, Centenary of the Northern Territory Supreme Court, Darwin, held on 23 May 2011.

Title: ‘The Northern Territory - A Celebration of Constitutional History’

Introduction
In one sense the occasion of a centenary is nothing special. It is an artefact of the means we have adopted for measuring the passage of time by the earth's orbit around the sun. Every instance of time since the first one hundred years after the adoption of that measure has been the centenary of something. Despite its intrinsic triviality, we use the centenary as a device to review the past, and to think about the future.

2011 is the Centenary of the creation of the Northern Territory as a Territory of the Commonwealth of Australia and the creation of the Supreme Court of the Territory, which is celebrated in a history of the Court written by Justice Dean Mildren.¹

This lecture is a reflection upon the constitutional history of the Northern Territory. It is an occasion to think about the future. It is also an opportunity to honour the memory of one of the most distinguished members of the Supreme Court of the Northern Territory, Justice Martin Kriewaldt, who was a significant part of that history.

Martin Kriewaldt was born in South Australia in 1900, the son of a school-mistress and a Lutheran Pastor.² His father had come to Australia from Wisconsin as a missionary in the 1890s. After his father's death in 1916, Martin studied in the United States. He returned to South Australia and graduated from the University of Adelaide with Bachelors degrees in Arts and Law in 1923 and 1925. He practised as a solicitor and taught at Adelaide University, largely in the law of property. He married twice and had five children.

Justice Kriewaldt was appointed to the Supreme Court of the Northern Territory in 1951 and died in office on 12 June 1960. The great Australian constitutional scholar, Professor Geoffrey Sawer, described him as one who possessed the virtues traditional in the Anglo-Australian judiciary – learning, wisdom, uprightness, fair-mindedness and a profound sense of public duty.³

Justice Kriewaldt thought seriously about the relationship between indigenous people and non-indigenous society and its laws. Some of his views would be controversial today. Then again, it is difficult to express any views in this complex and difficult area that will not be thought controversial by somebody. He recognised the importance of cultural difference. He thought it appropriate

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¹ Mildren D, Big Boss Fella All Same Judge A History of the Supreme Court of the Northern Territory (Federation Press, 2011).
to have regard to customary law in sentencing.\(^4\) He was aware of the difficulties confronted by traditional indigenous witnesses in the understanding and use of the English language and in giving evidence. He might be surprised, and I suspect pleased, to see the extent to which indigenous cultural awareness programs, including such topics as "Aboriginal English" are part of continuing judicial education across the country, funded by the Commonwealth and managed by a National Judicial College.

Justice Kriewaldt's memory lives on. There is a set of chambers named after him in the city of Darwin, a street named after him in Palmerston, and this biannual lecture in his name. It is a privilege to deliver this lecture in honour of a distinguished member of the Supreme Court of the Territory who made a major contribution to its jurisprudence and development as the third branch of Territory Government and so to the constitutional development of the Territory itself.

**National Stories**

Australia is often referred to as the oldest continent. Some minerals found in the Mt Narryer area of Western Australia have been dated back over four billion years. Microfossils and stromatolites found in the Pilbara are said to be amongst the earliest known life on earth.\(^5\) Although the history of mankind is just the blink of an eye in the geological timescale, the Australian landscape is laced with the marks and records of human occupation which stretches back forty or fifty thousand years. That represents the period over which Aboriginal people travelled to and occupied the Australian continent, beginning with Northern Australia until the whole land mass was occupied by their societies. They produced no written histories. Their Dreaming, which frames their laws and customs and their relationships to the landscape, its plants and animals, and to each other, was told through songs, traditions, ceremonies, extraordinary visual arts and the kinetic arts of the dance. The Aboriginal relationship to the land was described by Galarrwuy Yunupingu in a "Letter from Black to White" in 1976:

\[\text{The land is the art. I can paint, dance, create and sing as my ancestors did before me. My people recorded these things about our land this way, so that I and all others like me may do the same. I think of land as the history of my nation. It tells us how we came into being and what system we must live ... My land is my foundation ... Without land I am nothing.}\]

A different perspective on land and a new story began with the arrival of the British colonisers. On 26 January 1788, Arthur Phillip annexed the eastern half of Australia in the name of the British Crown. That event was followed by successive annexations of the rest of the continent and the evolution and division of the colonies so created into six self-governing polities. The colonising culture collided traumatically with that of the indigenous inhabitants. The law of the colonisers, including the common law of England, was incapable of engaging meaningfully with the laws and customs of Aboriginal societies. In 1833, the Aboriginal people of the Colony of New South Wales, which then encompassed the Northern Territory, were described by the


Supreme Court of New South Wales as "wandering tribes ... living without certain habitation and without laws ...". This was the Imperial judicial perspective on Australian Aborigines enunciated in 1889 by the Privy Council when it described the Colony of New South Wales and, by implication, the rest of Australia, as:

... a tract of territory practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominions.

The reality on the ground was exposed by the 1971 judgment of Sir Richard Blackburn in the Supreme Court of the Northern Territory in *Milirrpum v Nabalco Pty Ltd.* He had to decide whether Aboriginal native title could be recognised by the common law of Australia. He regarded himself as bound by the view of history embedded in the common law as enunciated by the Privy Council in 1889. Nevertheless, on his own examination of the evidence put before him concerning the traditional law and custom of the people of Gove, he found what he described as a "subtle and elaborate system highly adapted to the country in which the people led their lives", a system which he called "a government of laws, and not of men". His decision, although adverse to the peoples' claim, was a defeat which yielded a large result for indigenous people in the Territory. It was a catalyst for the establishment of the Woodward Royal Commission and the development of a statutory land rights scheme for the Northern Territory. That scheme set the scene for the recognition of native title at common law in the 1992 *Mabo* decision. With that recognition came a constitutional shift away from the view of history propounded by the Privy Council in 1889.

Indigenous occupation and British colonisation are two important parts of our history. Another important part is non-British migration. Since the second half of the twentieth century Australia has received waves of migrants of non-British origin from all over the world. They bring with them many different stories. Some have come seeking refuge from oppression and persecution. They represent a diversity of cultures and customs and outlooks which have enriched our society. Their coming is also reflected in the diversity of the people of the Northern Territory. Nearly one-quarter of the people who live in Australia today were born somewhere else. More than forty percent of Australians were either born overseas or have at least one parent who was born overseas. In recent years, migrants to Australia have come from over 180 different countries.

The stories of our people, the Indigenous, the colonisers and the migrants and the refugees are all important chapters of our national history. Despite the dark moments of that history, there is much to celebrate. Australia is one of the world's most successful and stable representative democracies. It has institutions which we sometimes take for granted, law-makers elected by the people, ministers and officials who are responsible to the elected law-makers and ultimately to the people, and a judiciary with high standards of

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7 *McDonald v Levy* (1833) 1 Legge 39 at 45.
8 *Cooper v Stuart* [1889] 14 App Cas 286 at 291.
9 (1971) 17 FLR 141.
10 (1971) 17 FLR 141 at 267.
independence, competence and honesty. A healthy and questioning scepticism about our institutions is a necessary part of a vibrant democracy. That scepticism, which does not accept the say-so of authority on matters of public importance, is expressed in many ways, including through national and regional media. It is good, however, from time to time to remember those features of our society in which we can take some pride.

In spite of its small population relative to the rest of the country, the Northern Territory has played a significant role in the constitutional history of the nation. That role may be understood by reflecting upon the chronology of colonisation, federation, self-government and the developing understanding of the scope and limitations of Commonwealth powers with respect to the Territory.

**The Constitutional Evolution of the Northern Territory**

Arthur Phillip's Proclamation of the Colony of New South Wales in January 1788 covered the area from the eastern coast of Australia to the 135th meridian, which passes close by Millingimbi in Arnhem Land. His Proclamation was the first step in the assertion by the British Crown of sovereignty over the land which is now the Northern Territory. The second step was the establishment by Captain Bremer, in 1824, of a military settlement at Fort Dundas on Melville Island. He took possession of the coastline as far west as the 129th meridian, which is the present boundary. The third step was taken in 1828 when the inland boundary of New South Wales was also extended to the 129th meridian by Governor Darling of New South Wales.

A misstep occurred on 17 February 1846. The Colony of North Australia was created by an Order-in-Council issued under the *Australian Constitutions Act 1842*. The new colony comprised that part of New South Wales north of the present South Australia and Northern Territory border and included what was later to become the Colony of Queensland. Sir Charles Fitzroy was appointed Governor. The putative government was never established in fact and on 28 December 1847 the Order-in-Council was revoked.13

Tasmania was separated from New South Wales in 1825 and Victoria in 1851. The colony of Western Australia was created in 1829 and of South Australia in 1834. Queensland was carved out of New South Wales by Ordinance in 1859. Its western boundary was the extension of the border between New South Wales and South Australia and a little to the East of the present boundary. In 1862, Queensland's boundary was extended further west to 138° east longitude, which is its present boundary with the Northern Territory Save for the interregnum when it was part of the short lived Colony of North Australia, the Northern Territory, until 1863, was part of the Colony of New South Wales. On 6 July 1863, by Letters Patent, Queen Victoria annexed the area known as the Northern Territory to the Colony of South Australia.14 Robert Garran, Secretary of the Commonwealth Attorney-General's Department, in an opinion which he wrote in 1909, said:

> It appears clear that by the Letters Patent the Northern Territory became part of the State of South Australia although power was reserved to the Queen to detach it again from that Colony.15

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13 *Rogers v Squire* (1978) 23 ALR 111 at 116 per Gallop J.
14 Pursuant to s 51 of the *Australian Constitutions Act 1842* (Cth); 5 & 6 Vic c 76 and s 2 of the *Queensland Government Act 1861* (Q), 24 & 25 Vic c 44.
The annexation of the Northern Territory to South Australia has been described as "an act unique in Australian colonial history: colonial expansion, largely for pastoral purposes, by another colony". It is perhaps ironic, in light of South Australia’s surrender of the Northern Territory to the Commonwealth in 1911, that it had a serious concern about the permanency of the annexation. South Australia made a request to the British Colonial Secretary in 1888 that the annexation be made permanent. The request was refused. The Colonial Secretary in classically opaque bureaucratic language said that the Northern Territory was "an integral part of South Australia". South Australia itself treated the Territory administratively as a species of dependency. Sir Isaac Isaacs in his judgment in *Buchanan v The Commonwealth* described the effect of the annexation:

> The Northern Territory though "annexed" to South Australia, and in one sense a "part" of that political organism, was always known by the distinctive name of the "Northern Territory", and in the official despatches between the Government of South Australia and the Colonial Office reference is made to South Australia proper and to the Northern Territory.

The South Australian legislature passed a *Northern Territory Act 1863* (SA), which made provision for the sale of land in the Northern Territory in order to fund its administration. The town of Palmerston, which later became Darwin, came into existence in 1869. The telegraph line from Adelaide to Palmerston was completed in 1872. Administration of the Territory originally conducted from Adelaide until 1874, was carried out thereafter by a Government Resident in Palmerston.

Justice Dean Mildren in his history of the Northern Territory Supreme Court suggests that although South Australia assumed that it had full constitutional power to deal with the Territory, the true legal position was not clear. He points to a case in the Supreme Court of South Australia in 1866 in which it was argued that the Court did not have jurisdiction to hear the trial of a man accused with the murder of an Aboriginal person at Chambers Bay in 1864. The argument was based upon the proposition that the Letters Patent annexing the Northern Territory confined the authority of the Governor of South Australia to the existing limits of that colony. The argument was that the Northern Territory was still subject to the government of New South Wales. That argument was not tested to the point of decision as the prosecution was dropped.

Initially, it was the Government Resident who was the judicial presence in the Northern Territory. He acted as a Special Magistrate. The Supreme Court of South Australia, which was a long way away in Adelaide, decided to establish circuit sittings. The first circuit judge, Judge Wearing, died on the return voyage from Darwin to Adelaide in 1875 when his ship was broken up by a tropical storm. The *Northern Territory Justice Act 1875* (SA) was enacted to provide for a resident Commissioner to be appointed to exercise the powers of a judge of the Supreme Court of South Australia. In 1884, that Act was amended to

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17 Renwick, n 16, p 9.
18 (1913) 16 CLR 315.
19 (1913) 16 CLR 315 at 335.
20 Renwick, n 16, p 8.
provide for the appointment of a judge as "Judge of the Northern Territory" with the same powers and jurisdiction as a judge of the Supreme Court of South Australia. The first appointment was Justice Pater, described in the Northern Territory Times as a man whose "nervous, excitable temperament and hasty, violent temper proved him utterly unfitted for the position of Judge."

Subsequently, to save money, South Australia decided to combine the functions of Government Resident and Judge. Those offices were occupied consecutively by Justice Dashwood, known as Northern Territory Charlie (1892 to 1905), Justice Herbert (1902 to 1910) and Justice Mitchell who was appointed in 1910. Justice Mitchell was to become the first judge of the Supreme Court of the Northern Territory when it was established by Commonwealth Ordinance in 1911.

By the 1880s, the movement to form an Australian Federation had well and truly begun. Each of the Australian colonies had established self-government through a series of constitutions made under the authority of Imperial Statutes. By the end of the 19th century, as Professor Daryl Lumb wrote:

The co-existence of six colonies on the Australian continent independent of each other in local policies, although united by common law, nationality and similar institutions of government, could not be the basis for a permanent constitutional system.  

There was also, as the Constitutional Commission wrote in 1987, a self-confidence in Australia largely due to economic prosperity and reinforced by Australian cricketers who were able to beat Great Britain at her own game. Australian artists, writers, poets and agricultural investors were also emerging.

The move to Federation
In the 1890s representatives of the Australian colonies came together in a series of Conventions to endeavour to agree upon a Constitution for the creation of an Australian Commonwealth. In the 1897 session in Sydney, a South Australian delegate, Mr VC Solomon, moved an amendment to the proposed Commonwealth of Australia Constitution Act, the Imperial Statute which was to give effect to the proposed Constitution, to ensure that the definition of the area comprising the Commonwealth of Australia included what he called "the Northern Territory of South Australia" as part of South Australia. One of the delegates was Isaac Isaacs. He asked: Is that part now technically South Australian territory?

Mr Solomon thought that was a rather difficult question to answer, given that the 1863 annexation had been at the pleasure of Her Majesty. He was concerned that a doubt might arise about the right of electors in the Northern Territory portion of South Australia to a voice in the affairs of the Commonwealth. His amendment was accepted. There is a certain irony in reflecting upon that discussion, having regard to the post-surrender history of the Northern Territory's representation in the Federal Parliament, the challenge to that representation and the Territory's long, slow evolution towards self-government.

Two provisions of the Constitution, adopted by the colonial delegates, have been

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21 Quoted in Mildren, n 1, p 20.
22 Lumb, RD, Australian Constitutionalism (Butterworths, 1983) p 47.
pivotal in the constitutional history of the Territory. The first is s 111, which provides:

The Parliament of a State may surrender any part of the State to the Commonwealth and upon such surrender and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

The other provision is s 122, which relevantly provides:

The Parliament may make laws for the Government of any territory surrendered by any State to and accepted by the Commonwealth, ... and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Importantly, s 122 provided for the possibility that Australian territories might be represented in the Parliament. It did not confer any right to such representation. That was a matter for the Commonwealth Parliament.

As a result of Mr Solomon’s motion to amend the Commonwealth of Australia Constitution Bill, which was to be submitted to the Imperial Parliament, the status of the Northern Territory at the time of Federation was expressly reflected in cl 6 of the Commonwealth of Australia Constitution Act 1901. Clause 6 of that Act, generally known as covering clause 6, listed the colonies entitled to become States of the new Commonwealth. On that list was the colony of “South Australia including the northern territory of South Australia”. Upon the proclamation of the Constitution, as Sir Robert Garran wrote:

South Australia ... became a State of the Commonwealth; and the State of South Australia clearly, in accordance with covering clause 6, includes the Northern Territory.23

As part of a State, the Territory was part of the Commonwealth by the operation of cl 6. There was a question about what constituted the Commonwealth. In the course of argument in the Buchanan case in 1913, following the acquisition of the Northern Territory by the Commonwealth, Isaacs J, then a Judge of the High Court, asked the question:

Does "the Commonwealth" in s 6 of the Constitution Act include a territory acquired by the Commonwealth.

That foreshadowed the important constitutional debate, which would echo through the years, about the extent to which the powers of the Commonwealth to make laws for the Territory, stand outside other provisions of the Constitution or are affected by constitutional guarantees and limitations.

The Commonwealth of Australia came into existence on 1 January 1901 and the Northern Territory as part of the State of South Australia, was part of the Commonwealth. The residents of the Northern Territory therefore began their life under the new Constitution as residents of a State. The State of which they were part was entitled to all the same constitutional powers and protections and was subject to the same constitutional limitations as the other States. The Northern Territory, as part of South Australia, had statehood and continued to have statehood for the first ten years of Federation. However, change was

soon in the air.

In 1907, South Australia, which was finding its administration of the Northern Territory financially burdensome\(^{24}\) made an agreement with the Commonwealth under which it would surrender the Territory to the Commonwealth. That surrender was effected under s 111 of the Constitution. Under the agreement the Commonwealth took over South Australia's loans in respect of the Territory. They exceeded £3 million. The Commonwealth also agreed to purchase the partly completed Transcontinental Railway from Adelaide to Darwin and promised to finish it. An attempt by South Australia in 1962 to compel the Commonwealth to honour that promise was rejected by the High Court on the basis that the Commonwealth had never promised to do the job within any particular time. Three of the Justices also thought that the agreement was political, and not legally enforceable.\(^{25}\)

Both the Commonwealth and South Australian Parliaments passed Acts giving effect to their agreement.\(^{26}\) The Northern Territory became a Territory of the Commonwealth on 1 January 1911. On that day its inhabitants ceased to be residents of a State and became subject to the legislative powers conferred upon the Commonwealth Parliament by s 122 of the Constitution.

The *Northern Territory (Administration) Act 1910* (Cth), made under s 122, provided for the government of the Territory after its surrender was accepted by the Commonwealth. The Territory was to be governed by an Administrator appointed by the Governor-General. The Administrator was subject to ministerial instructions. The laws of the Territory were Ordinances, a species of subordinate legislation, made by the Governor-General. This was government by a Federal Minister. In Dean Mildren's book on the history of the Supreme Court there is a quotation from Dean Jaensch which sums up the effect of the surrender:

> The transfer of the Territory to the Commonwealth in 1911 removed all representation for Territorians, ended local participation in policy-making, and the style of administration was summed up by the portfolio of the administering authority – the Minister for External Affairs.\(^{27}\)

The loss of statehood in 1911 meant that the residents of the Territory had no representation in the Federal Parliament. In 1922, the *Northern Territory Representation Act 1922* (Cth) was enacted providing for a single non-voting member of the House of Representatives. The rights of that member were gradually expanded over the ensuing years. In 1968 the Northern Territory representative acquired full voting rights and the same immunities, privileges and rights as other members of the House of Representatives. Representation in the Senate was not achieved until 1973 with the enactment of the *Senate (Representation of Territories) Act 1973* (Cth) allowing for the election of two senators from the Northern Territory.

The Bill for the *Senate (Representation of Territories) Act* had a troubled history. With associated Bills and the Petroleum and Minerals Authority Bill, it

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\(^{24}\) Renwick, n 16, p 10.

\(^{25}\) *South Australia v The Commonwealth* (1962) 108 CLR 130.

\(^{26}\) *Northern Territory Surrender Act 1907* (SA); *Northern Territory Acceptance Act 1910* (Cth).

\(^{27}\) Mildren, n 1, p 34 quoting Dean Jaensch, *The Slow Road to Statehood*. 

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was twice rejected by the Senate. This led to a double dissolution and an election for both Houses, followed by a joint sitting of both Houses at which the Bill was passed pursuant to the provisions of s 57 of the Constitution. Western Australia challenged the validity of the process which had led to the double dissolution and joint sitting. It also challenged the validity of the Act alleging that it was beyond the power conferred on the Commonwealth by s 122. The High Court held that the Bills had been duly passed. It also held, by a 4-3 majority, that the Act was a valid law of the Parliament within s 122 of the Constitution. 28

The challenge to the validity of the Act was based upon s 7 of the Constitution, which provides that "[t]he Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate". On the other hand, s 122, the territories' power, authorises the Parliament to allow the representation of a Territory "... in either House of the Parliament to the extent and on the terms which it thinks fit". The majority of the Court held that s 122 qualified the requirements of s 7. Sir Anthony Mason, who was a member of the majority, put it this way:

Sections 7 and 24 should be regarded as making provision for the composition of each House which nevertheless, in the shape of s 122, takes account of the prospective possibility that Parliament might deem it expedient, having regard to the stage which a Territory might reach in the course of its future development, to give it representation in either House by allowing it to elect members of that House. To the framers of the Constitution in 1900 the existing condition of the Territories was not such as to suggest the immediate likelihood of their securing representation in either House, but the possibility of such a development occurring in the future was undeniable. The prospect of its occurrence was foreseen and in my view it found expression in s 122. 29

The road to self-government was long. By the Northern Australia Act 1926 (Cth) the Commonwealth divided the Territory into North and Central Australia, to be administered by Government Residents with partly elected Advisory Councils. That initiative failed because it was administratively too costly in a time of economic hardship. 30 The 1926 Act was repealed in 1931. The Territory's representative in the House of Representatives moved a motion in 1931 to amend the Northern Territory (Administration) Act to create an Advisory Council with plenary power to make Ordinances for the Territory with the consent of the Governor-General. The proposed amendment was rejected in the Senate.

In the period from 1942 to 1947, the Territory was effectively under military control and governed by an Administrator. However, in his 1943-44 Report the Administrator recommended the creation of a Legislative Council with equal numbers of elected and nominated members and power to make Ordinances on particular subjects, subject to veto by the Administrator. Nothing was done about this until 1947. 31

28 Western Australia v The Commonwealth (1975) 134 CLR 201.
29 Western Australia v The Commonwealth (1975) 134 CLR 201 at 270.
30 Renwick, n 16, p 16.
31 Renwick, n 16, p 17.
The Northern Territory (Administration) Act 1947 (Cth) established a Legislative Council in the Territory consisting of seven appointed members and six elected members. The Council had the power to make Ordinances for the "peace, order and good government of the Territory subject to assent by the Administrator or the pleasure of the Governor-General". The validity of that legislation and what that power involved was considered by Justice Kriewaldt in his decision in Namatjira v Raabe in 1958.32 The case is helpfully summarised in Dean Mildren's book.33 The Legislative Council made a Welfare Ordinance 1953-1957 under which the Administrator could declare an Aboriginal person to be a ward if that person stood in need of "special care and assistance". The effect of such a declaration was to impose major restrictions on the ward's liberties, including freedom of movement, residence, association, cohabitation and marriage. By a block declaration, every Aboriginal in the Territory, save for six, was declared to be a ward. Albert Namatjira was one of the six who was not so declared. He was charged with supplying alcohol to an Aboriginal who was a ward. In his defence, the validity of the Welfare Ordinance was challenged. One of the arguments advanced was that the Commonwealth Parliament could not validly delegate legislative power to the Legislative Council. It had to make the laws for itself under s 122. Justice Kriewaldt rejected that argument. He placed his conclusions in the context of the progression of the Territory towards statehood and said:

In the passage of the Northern Territory to statehood two steps have been taken in the legislative field: (a) legislation by the Governor-General and (b) legislation by a Legislative Council with a majority of nominated members. Further steps bringing the Legislative Council nearer in status and power to a State Parliament will, I have no doubt, be taken and be necessary before the Northern Territory takes its place as one of the States of the Commonwealth. In my opinion, section 122 of the Constitution does not prohibit the gradual advance towards Statehood.34

He also rejected an argument which has been raised on a number of occasions in different contexts that the Ordinance was not for the peace, order and good government of the Territory, Kriewaldt J said:

If the members of the Legislative Council in their collective wisdom, decide that the proposed law is a desirable law to be enacted, then that law must be taken by the Courts and the people to be a law for the peace, order and good government of the Territory.35

This reflected a proper respect for the separation of powers and the limitation of the judiciary to its proper function. It is that mutual respect between the three branches of government which is indispensable to a constitutionally grounded representative democracy.

In 1959, the composition of the Legislative Council was changed to eight elected members, six official members and three appointed non-official members.36 An Administrator's Council was formed which acted as an advisory body to the Administrator. It could be regarded as a precursor to an Executive Council. The Commonwealth retained its power to disallow Ordinances and its

32 (1958) NTJ.
33 Mildren, n 1, pp 165-166.
34 (1958) NTJ at 616, see Mildren, n , p 166.
35 (1958) NTJ at 617.
36 Northern Territory (Administration) Act 1959 (Cth).
absolute control of the Executive Government. There were frequent
disallowances of Territory Ordinances, accompanied by a failure to provide
adequate reasons when referring legislation back to the Council for
amendment.37

In 1974, the Commonwealth replaced the Legislative Council with a fully
elected Legislative Assembly of 19 elected members. This was done by the
Northern Territory (Administration) Act 1974 (Cth). The Administrator's Council
now comprised the Administrator and five elected members. In the same year,
a Joint Committee on the Northern Territory's Constitutional Development
delivered a report proposing that a Northern Territory Executive be established
with responsibility for statutory authorities and boards and an increasing
number of what were called "State-type" functions, which were then the sole
responsibility of the Commonwealth Executive. A second report in 1975, which
was set up to reconsider those recommendations after Cyclone Tracey,
maintained them. An Executive Council, to advise the Administrator, was
established with effect from 1 January 1977. This was done by the Northern
Territory (Administration) Act 1976 (Cth). The members of the Executive
Council were to assist in governing the Territory in such matters as the
formulation of policies and plans and directing the activities of some public
servants. Some statutory boards, authorities and functions previously
discharged by the Commonwealth Department were transferred. In July 1977,
the Commonwealth announced its intention to grant self-government to the
Territory. That self-government commenced with the enactment of the
Northern Territory (Self Government) Act 1978 (Cth).

The Self Government Act established the Northern Territory as a "body politic
under the Crown …"38 A Legislative Assembly was created, similar in
composition and powers to its predecessor. The Assembly received from the
Commonwealth Parliament a grant of legislative power to make laws for the
"peace, order and good government of the Northern Territory". The Executive
Government consisted of ministers drawn from and responsible to the local
legislature presided over by the Administrator.39 There were a number of
express limitations on the law-making powers of the Assembly. The Assembly
could not make a law acquiring property, other than on just terms. This was in
similar terms to the constitutional limitation on the legislative power of the
Commonwealth imposed by s 51(3xxi) of the Constitution. Section 49 applied
the guarantee of free trade in s 92 of the Constitution into the Territory, as had
s 10 of the Northern Territory (Administration) Act 1910. Importantly, the grant
of legislative power to the Territory did not qualify or reduce the power of the
Commonwealth under s 122. It could still make laws for the Territory.
Executive power was divided between the Northern Territory Ministry and a
Commonwealth Minister. The Northern Territory was empowered to establish
its own treasurer, control its finances and borrow moneys.

The Supreme Court of the Territory had continued under the Supreme Court
Ordinance 1911 until that Ordinance was repealed in 1961 and the Court re-
established by Commonwealth law under the Northern Territory Supreme
Court Act 1961. It continued to operate under that Act until 1979 when the
Northern Territory Supreme Court (Repeal) Act 1979 (Cth) was passed by the
Commonwealth and the Supreme Court Act 1979 (NT) passed by the Northern

37 Renwick, n 16, p 19.
38 Northern Territory (Self Government) Act 1978 (Cth), s 5.
Territory Legislative Assembly. In that year, the office of Chief Justice was created, replacing the previous office of Chief Judge, which had been established in 1975 and whose only incumbent was Sir William Forster.

The power of the Commonwealth to endow the Territory with separate political, representative and administrative institutions and control of its own finances had been asserted by the High Court in *Berwick Ltd v Gray*. The establishment of the Northern Territory as a self-governing polity was no less effective, because it derived from the exercise of Commonwealth legislative power, than the Constitutions of the Australian colonies in the 19th C which derived from Imperial Statutes.

The Territory today has the constitutional infrastructure for statehood. It has a legislature, an executive and an independent judiciary. It has representative democracy and responsible government. But constitutionally, it is not a State. There is a qualitative difference between a self-governing territory and a state under the Constitution. There are specific provisions in the Constitution relating to the Constitutions of the States, the powers of State parliaments and the saving of State laws. The *Self Government Act* is a law of the Commonwealth. In theory, it could be amended or repealed by the Parliament of the Commonwealth. That theory is, of course, a long way from any practical reality. But it is an inescapable aspect of the constitutional relationship that the Commonwealth still has the power to make laws under s 122 affecting the Territory that it could not make with respect to the States. An ongoing question is – how large is that power today?

Not long after Federation, Quick and Garran in their commentary on the new Constitution took the view that the position of the Commonwealth Parliament with respect to its territories was that of "a quasi sovereign government" and that it could "rule the Territory as a dependency, providing for its local municipal government as well as for its national government". Robert Garran in an article which was published in 1935, said that the Commonwealth's power under s 122 was not affected by limits on its other legislative powers.

Harrison-Moore in his text *The Constitution of the Commonwealth of Australia*, written in 1910, regarded the Commonwealth Parliament as having "all the powers of a unitary government" over the territories. That early idea that the territories' power stood apart from the other legislative powers of the Commonwealth attracted the label "disparate power" theory and was reflected in decisions of the High Court during the first fifty years of Federation. As Professor Leslie Zines wrote in 1966:

> On this reasoning, the provisions and doctrines relating to such things as the separation of powers, free trade, religious freedom, compensation for acquisition of property, jury trials and life appointments for judges are 'not applicable to the territories'. They do not limit the full sovereign

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40 (1976) 133 CLR 603 at 607 per Mason J, Barwick CJ, McTiernan and Murphy JJ agreeing.
power given to the Commonwealth by s 122. Associated with this approach are usually statements that distinguish between the territories and 'the Commonwealth proper' and state that the territories are not 'part of' or 'fused with' the Commonwealth. 45

In affirming the decision of the High Court in the Boilermakers' Case 46 the Privy Council said that s 122 was a "disparate and non-federal matter". 47 A significant departure from that disparate theory occurred in the year following the decision in Boilermakers. In Lamshed v Lake 48 the Court held that a law of the Commonwealth made under s 122 could operate in a State. Dixon CJ in that case discussed the relationship between laws made under s 122 and other parts of the Constitution affecting legislative power. He could see no reason why the guarantee of religious freedom and the prohibition against establishment of a religion under s 116 could not apply. Kitto J spoke of the need to adopt an interpretation of s 122 which would treat the Constitution "as one coherent instrument for the government of the Federation, and not as two constitutions, one for the Federation and the other for its Territories". 49 The integrationist view was stated forcefully by Menzies J in 1965 in Spratt v Hermes 50:

To me it seems inescapable that territories of the Commonwealth are part of the Commonwealth of Australia and I find myself unable to grasp how what is part of the Commonwealth is not part of the federal system. 51

On the other hand, in 1969, in its decision in Teori Tau v The Commonwealth 52 the High Court held unanimously that the power of the Commonwealth to make laws acquiring property in a territory were not limited by the constitutional requirement applicable to other Commonwealth laws that just terms be provided.

The question of the interaction between s 122 and the just terms requirement of s 51(xxxi) of the Constitution arose recently in the decision of the High Court in Wurridjal v The Commonwealth 53. That case concerned a challenge to the validity of a Commonwealth law supporting the Northern Territory intervention. The question was whether a law creating, in favour of the Commonwealth, statutory five year leases over Aboriginal land, was an acquisition of Aboriginal property and had to comply with s 51(xxxi) of the Constitution, requiring just terms for the acquisition. The Court, by majority, overruled its 1969 decision that the guarantee did not extend to the Northern Territory. 54 As a result of that decision Commonwealth laws operating in the territories are subject to the requirements of s 51(xxxi). That is to say, the people of the Territory have the same protection in respect to the acquisition of their property by a Commonwealth law as do the people of the States. There is a similar protection built into the Self Government Act in respect of Territory laws. There

46 R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254.
47 Attorney-General of the Commonwealth v The Queen (1956) 95 CLR 529 at 545.
48 (1958) 99 CLR 132.
49 (1958) 99 CLR 132 at 154.
50 (1965) 114 CLR 226.
51 (1965) 114 CLR 226 at 346.
52 (1969) 119 CLR 564.
are, of course, many unanswered questions about the interaction between s 122 and other provisions of the Commonwealth Constitution. There have been a number of decisions of the High Court touching on those questions. Importantly, some of those decisions have established that courts of the Territory are courts which may exercise the judicial power of the Commonwealth if invested with federal jurisdiction by laws made by the Commonwealth Parliament. It follows that such courts must be and appear to be independent and impartial tribunals. That means that the courts of the Territory enjoy constitutional protection against legislative impairment of their independence and impartiality as do the courts of the Australian States. So far as the Northern Territory is concerned, however, questions about the limits of Commonwealth power under s 122 may arise from time to time unless and until the Territory becomes a State of the Commonwealth.

The questions raised by cases about s 122 have provided an opportunity for judges, practitioners, legislators and scholars to reflect upon the long-standing questions about the nature of the Commonwealth and the essential unity of its people, whether they live in a State or a Territory. I have no doubt that the perspective of many Territorians is that they are members of the Commonwealth, and should be treated as such.

The Territory is, in one sense, poised to become a State. Whether it does, and when it does, and on what terms it does, will depend a great deal upon the people of the Territory. No doubt, there will be debate about the terms of a constitution. Should it simply reflect existing arrangements with room for change? Should it include some aspirational statements? Should it include provisions recognising indigenous people and their connection with the land? Constitutions are important, but whether they work well or not is critically dependent upon the people – the electors – those whom they elect and those who are appointed to operate constitutional institutions. It is good to remember the words of Dr BK Ambedkar, who chaired the committee which drafted the Indian Constitution. On 25 November 1949, the day before that Constitution came into effect, he said:

I feel however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot.

Conclusion
The Northern Territory, in the hundred years of its existence as a Territory of the Commonwealth, has played a significant part in Australia's constitutional history. It has reached a stage in its constitutional development, when it is equipped with the constitutional infrastructure necessary for statehood, an elected legislature, responsible government and a well-established and well respected judiciary with one hundred years of history behind it. I expect that by the time the next centenary comes around, the Northern Territory will have many years of statehood behind it and, as a state, will have made its own contribution to constitutional practice and no doubt litigation in the field of Commonwealth/State relations.

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56 Address by Prime Minister of India, Shri Atal Bihari Vajpayee on the occasion of the 50th anniversary of the Republic of India (27 January 2000) citing Dr BK Ambedkar participating in the Constituent Assembly Debates: <http://parliamentofindia.nic.in/jpi/MARCH2000/CHAP1.htm>. 
Surrender and acceptance
This year is 100 years since the state of South Australia formally surrendered the Northern Territory and it was accepted by the Commonwealth. Any state can do this, NSW did it for the ACT under s.111 of the Constitution at around the same time (1913). In 1863 South Australia accepted the Territory from NSW. There is some nice symmetry here as we shall see when we discuss 1863 and 1963 shortly.

Negotiations to jettison the Northern Territory commenced between South Australia and the Commonwealth almost immediately after Federation. It is instructive to read some of the documentation considering the deal to bring about this event. The provisions of the agreement are set out in Part 3 of the Commonwealth’s Northern Territory Acceptance Act of 1910. An exchange of correspondence between the Premier of South Australia and the Prime Minister late in 1907 demonstrates concern about who was liable to pay for the overland telegraph from Adelaide to Darwin. This was settled in time and it is reflected in the legislation where Section 14 outlines the obligations of the Commonwealth in regard to South Australian debt.

Also of interest is the obligation on the Commonwealth to construct a transcontinental railway from Port Darwin to the South Australian border. We all know how long that took. It is referred to often in the Hansard when discussion arose about the Territory over the next 90 years until its completion this century. It is perhaps a lesson in perseverance and Statehood is another lesson in perseverance.

Opinion was canvassed on whether or not the Commonwealth should reserve the Northern Territory Acceptance Bill for the King’s signature. The opinion advised there was no constitutional need to do so. The South Australian Surrender Bill had been reserved and despite attempts to find a copy of the Bill signed by the King, I have not seen it.

The title of this talk reflects some of the Northern Territory’s interaction with our constitutional masters. The talk is structured under themes more than in a chronological order. As I have just mentioned Queen Victoria and King Edward V11, the first main theme is the crown.
Australian Archives contain some documents in relation to the royal visit. This includes a file titled, *Health Hints for the Royal Party*. The Royal Couple was warned to be ‘dentally fit’ for their trip to Australia and inoculations against polio were recommended. Sir Roy Dowling, the Queen’s Australian Secretary for the visit, was specifically warned about Northern Territory mosquitoes. ‘You could be placed in an extremely embarrassing situation if the Queen’s skin was marked and if the press published pictures and stories about those marks’, he was advised.

The Queen has visited Australia’s territories on a number of occasions. As well as the Northern Territory, the Queen has visited Norfolk Island, the Australian Capitol Territory on a number of occasions and even the Cocos Islands prior to their becoming an Australian Territory. I mention the Cocos (Keeling) and also Christmas Islands specifically because the electors of those islands vote in the Territory electorate of Lingiari and statehood for the Territory will impact upon their representation in the House of Representatives.

But what of the Crown in the Territory and the move to statehood? In the six existing Australian States, the Queen has a specific status as outlined in the *Australia Acts* of 1986. The Queen is not just the Head of State for the nation, she is the constitutional Head of State for each of the States. This is unique to Australia. For example, in Canada, the provinces do not have Governors, they have Lieutenant Governors who report to the Governor General. In the Australian situation the State Governors are not subject to direction or control by the Governor General and have no lesser status under the Constitution.

Last year on behalf of the Statehood Steering Committee I asked the Territory Solicitor General some questions about how we get a Governor and he advised the following; ‘As the Governor of the State is necessarily the representative of the Monarch, the Monarch should be consulted in advance to secure her consent to acting as the head of a new State. It would be a matter for the Commonwealth to undertake those consultations.’

There remains a question as to whether other arrangements can be made. The Draft Constitution circulated to the 1998 Statehood Convention read as follows: ‘There shall be a Governor of the Northern Territory who shall be appointed by Her Majesty on the advice of the Premier and who shall hold office during her majesty’s pleasure.’ The controversial convention resolved instead; Resolution 21; ‘That the new Constitution provide that the Head of State be appointed by the Premier.’ The Solicitor General advised the Statehood Committee last year that; ‘It may be possible for the new State Parliament to determine whether to vest the power to appoint and terminate the appointment of the Governor in some other body.’

So the future role of the Crown and the Territory remains a little unclear in the constitutional development, but what about now? If you travel to a State and you observe the Governor’s motor vehicle, you would see a car with no number plate, just a crown where that would be. In the Territory the Administrator’s vehicle is not so decorated. It has a regular number plate and carries the Australian flag, not the Territory flag or any regal or vice regal insignia.

The Administrator of the Northern Territory is subject to some instruction by the Commonwealth Minister in Charge of Territories and for other matters has power conferred in right of the Crown under s.35 of the *Self Government Act,*
which of course can be changed by the Australian Parliament at any time. The appointment of the Administrator is the prerogative of the Australian Government advising the Governor General and not the Northern Territory Government which has no relationship to the Governor General under the existing constitutional arrangements.

In strict terms the Administrator represents the Crown in right of the Territory. As the Administrator only has functions available under s.35 power, the Administrator cannot represent the Crown for all purposes in the Territory and where he does not is subject to the direction of the Commonwealth Minister. The Governor General retains the vice regal power in relation to the Territory for other purposes. The State Governors (since the 1986 Australia Acts) may exercise all the powers of the Monarch in the administration of a State and are therefore ‘viceroys’ and the Monarch (through the Governor) now only acts on the direct advice of the State Ministers. The Commonwealth became a separate realm either upon Federation or most definitely after the passage of the Statute of Westminster in 1931 and the Governor General has had the executive powers of a viceroy as a consequence.

The grant of power to the Administrator under s.31 of the Self Government Act, comes from the strength of the Commonwealth position. This gives the Administrator the role of taking advice directly from his Territory Ministers as well as being subject to instruction by the Commonwealth Minister in circumstances where the Self Government Act does not give the Territory executive power. For example, if the Territory were to pass a law outside of s.35 power to deal with Aboriginal land or to mine uranium, the Administrator would be subject to direction by Simon Crean no matter what advice he receives from Paul Henderson.

There is an interesting twist to the common perception that the Queen of Australia assumes the executive powers of the Monarch when present on Australian soil. S.7(4) indicates the Queen has discretion to exercise all of her State constitutional when present in a State. In the State context, the only real power still residing with the Monarch is her power to appoint or dismiss a Governor. However if the Queen is present in the Territory her powers are even more constrained.

Under the Self Government Act, the Queen’s powers and prerogatives in relation to the Government of the Territory are vested in the Administrator, the power to appoint lies with the Governor General and accordingly there is according to the Self Government Act, ‘No power in respect of a Territory which may be exercised personally by the Monarch whether present in the Territory or not.’ This is all very interesting because many people have a misconception about the Crown and the role of the Administrator and our status as a Territory. The former Co Chair of the Statehood Steering Committee was discussing this matter some years ago and was told that some senior Aboriginal women in Central Australia took the view that Statehood might dilute their ability to appeal to the Queen in a case of manifest injustice perpetrated upon them by the Government.

Rebels
Apart From the so called Darwin Rebellion, which brought to prominence the union activist Harold Nelson, who was later the first member for the Northern Territory in the House of Representatives, Territorians sometimes consider themselves somewhat separate from the rest of the nation. The rebel element
is well documented. This includes a plaque located on Liberty Square located between Parliament House and Government House which describes the activities leading to the recall of Administrator Gilruth.

As Administrator at the time, Gilruth had broad power to administer the Territory as a kind of internal colony. This included a refusal to allow bar workers a day off to celebrate the end of World War one. A clearly fed up local populace gathered at Liberty Square on 17 December 1918 where approximately 1000 demonstrators marched on Government House and demanded John Gilruth’s resignation. The grievances were against the two main Northern Territory employers, Vestey’s Meatworks and the Commonwealth of Australia and also concerned political representation, unemployment and taxation. Gilruth left Darwin soon afterwards sailing on HMAS Encounter, while the Vestey company permanently closed its Darwin operations in 1920.

During his maiden speech delivered on 22 June 1923 in the House of Representatives and in one of the very few speeches he could actually give, Harold Nelson referred directly to Gilruth and his successor;

> I cannot escape the conclusion that the present system is bad, because the chief characteristics of the officials sent there (to the NT) seemed to be inability and incompetence in matters pertaining to the Territory’s development. I go so far as to say, that the existing system has proved abortive and the only way out is to appoint an elective advisory board, chosen by the people, with a Government official as its chairman. That would facilitate the advancement of the Territory’s best interests and secure a true reflex of the will of the inhabitants.

> From the very commencement, the work of the present Administrator was doomed to failure. He was selected because he was a great tyrant … I defy any honourable member to tell me one constructive thing that the present Administrator has done (Frederic Charles Urquart – Administrator 1921-27). I do not believe he has a constructive thought, and yet he presides over the destinies of people occupying an area of 500,000 square miles. An individual with a life training for a policeman is not the right type for a position of this nature. It is certainly a job for a man whose interests are centered in the Territory and who wishes from patriotic motives to see it progress.

> I would like to direct the attention of honourable members to the type of men that the Government has invariably selected to control the Northern Territory. I refer particularly to one John Anderson Gilruth. He has published recently in a local newspaper a statement to the effect that the Territory is ‘hopeless, worthless and useless’. If this were so, I want to know why he took payment from the Federal Government! If we accept his own statements he knew that the Territory was ‘hopeless, worthless and useless’ and yet lied to the Ministers of the Crown saying it was a Paradise Lost. To condemn him, it is only necessary to read his official reports.

Distance and development were consistent themes for all members and Nelson naturally spoke of the proposed railway which was promised as part of the surrender;

> It is very gratifying to me to know that, at last, the Government intend to develop the Territory by the only satisfactory method, namely by railway construction. Without railway construction the Commonwealth might just as well send the Northern Territory back to the imperial
authorities and confess its failure to develop the wonderful inheritance that was passed on to it by the South Australian Government.

A great deal has been said in this chamber about immigration and defence. The most effective defence Australia could have would be provided by the settlement of a virile white population in the Northern Territory and this could be achieved without great difficulty. With its area of 500,000 square miles and its great possibilities, the Territory presents opportunities for the settlement of hundreds of thousands of people.

Rights issues were also of concern to Nelson.

The abolition of trial by jury in the Northern Territory is a serious matter and should receive the earnest consideration of members of this chamber. There, for all but capital offences, the citizen is denied the right of trial by his peers. That position is intolerable. Trial by jury is one of the fundamental principles of British justice and should not be denied the Northern Territory. Legislators are not going to deny it to other States. Policemen are sent into the country to carry out all sorts of duties and in some cases the Government will not provide them with accommodation.

Another member interjecting; ‘they are not allowed to marry’.

Mr Nelson; that is so, these are the guardians of law and order. If a Policeman decides to marry, he has to resign from the Force. Any Government, which sacks an employee because he wants to follow the dictates of nature, is inhuman.

Mr Nelson concluded with comments about extending the railway saying it will then be found within a comparatively few years that the Northern Territory, instead of being the great financial sink that it is at the present time, will be converted into a productive and worthy region taking its place among the States of Australia.

Returning to the spirit of rebellion. It was also alive during the Queen’s 1963 visit. The National Archives cite an ASIO file for the period. It contains press cuttings relating to security aspects of the Royal visit. It also holds reports of rumored industrial action in the Northern Territory which was intended to coincide with the arrival of the Royal Party in Darwin. It contains as well details of security checks conducted on staff of the Post-Master General’s Department and Trans Australia Airlines who would be involved in mail delivery for and transportation of the Royal Party. A month prior to the arrival of the Queen in the Northern Territory, a republican recruitment drive was initiated in Darwin. The Bulletin magazine of 9 February 1963 at page 8, reported that;

Territory politics have acquired a new ‘ratbag’ fringe with the formation of a Republican Party Branch in Darwin. Less than a week after party organizer, Mr Jeff Keegan, arrived in Darwin, he had the worthy burghers of the town enraged and even won from the Government the ultimate accolade of a Security Police investigation ... Wildest of all was Mr Ron Taylor, President of the local branch of the Royal Commonwealth Society, who said, 'people like this should be deported to Russia'. Whilst verbal storms raged about his head, Keegan went on quietly signing up members. By weeks end he had 25, a figure he hopes to at least double in the next fortnight …
It is worth noting that 1963 was also the year that the Yirrkala Bark Petitions were sent from Arnhem Land to the Government in Canberra. In 1963 the Yolngu people were protesting against the mining and development of the now well established project at the Gove Peninsula. It is not just the rebels of European descent we need to take into account. The Aboriginal people of the Territory have been fighting since day one and have had a significant influence and continue to have one when it comes to Statehood for the Territory.

This protest arguably laid the ground work for the 1976 Land Rights Act and, while the Gove case was lost in the Federal Court, which found Australia to be Terra Nullius, it also laid the ground work for the eventual Mabo decision which in 1992 recognised prior Aboriginal occupation was in fact a reality. The Aboriginal Conventions in 1998 played a pivotal role in the outcome for Statehood and their impact resonates today. Without the impact of Aboriginal Territorians, Statehood won’t fly. I would suggest you can draw a line from 1963 to 1998 quite easily showing that Aboriginal activism was a significant influence on the final ‘No’ vote. The exclusion of Aboriginal people under the Australian Constitution for census purposes was not rectified until the 1967 referendum and discussions continue today about how to include First Australians in the Australian Constitution.

People of the Commonwealth
Is it any wonder that there is a streak of rebellion in Territorians who were not, for constitutional purposes, to be considered ‘people of the Commonwealth’. One of the immediate consequences for residents in the Northern Territory of South Australia as it became the Northern Territory of Australia was disenfranchisement. An opinion of the Attorney General dated 10 August 1911 refers to the Representation Act of 1905 and its interplay with the Constitution at s.24 and s.25. Section 24 of the Constitution states that Members of the House of Representatives shall be composed of members chosen by the people of the Commonwealth.

The Attorney said that since the people of the Northern Territory reside within the Commonwealth of Australia in the ordinary meaning of the words, then they are part of the people of the Commonwealth. However he went on to opine that within the meaning of s.24 of the Australian Constitution so long as the Territory remained unrepresented then within the meaning of s.24 Territorians were not ‘people of the Commonwealth’. On that basis the Attorney said the people of the Territory should not be included in the number of people of the Commonwealth for the purposes of paragraphs 1 and 11 of section 24 of the Constitution;

The Territory is not entitled to representation in either House unless Parliament, by Act, expressly allows it. So long as the Territory remains unrepresented, I think for the purposes of representation, and within the meaning of section 24 (Australian Constitution), its inhabitants are not ‘people of the Commonwealth’.

Today we take it for granted we are all equal Australians, but are we? The people of the Northern Territory who were eligible to be electors one year earlier as part of South Australia were, by virtue of the ability of any state to surrender territory to the Commonwealth under section 111 of the Constitution, not only disenfranchised, but indeed considered for the purpose of the Constitution and representation in the Australian parliament, not to be people of the Commonwealth. The Territory now has representation by virtue of Acts
of the Commonwealth Parliament, and we are of the Commonwealth for purposes of section 24 of the Constitution. Section 24 states;

_The House of Representatives shall be composed of members directly chosen by people of the Commonwealth and the numbers of such members shall be, as nearly as practicable, twice the number of Senators._

The section continues with detail on proportion and quotas to determine the representation from each state which, of course, continues to exclude Territorians. So while we are all Australians, to this day we remain unequal Australians for Constitutional purposes by virtue of residing in the Northern Territory. Can we rest assured that because of an Act of the Commonwealth Parliament our electoral fortunes at the Commonwealth level will be protected? State residents have a Constitutional guarantee to representation and voting at Commonwealth elections. As long as we remain a Territory we remain subject to continuing second-class constitutional status.

As soon as the Northern Territory was surrendered under section 111 and accepted by the Commonwealth for administration under s.122 work was underway to remove the adult franchise of voting Territorians. The Australian Electoral Commission immediately commenced work in late 1910 to remove people residing within the Northern Territory from the electoral role for the division of Gray in time for a national referendum to be held in 1911. A memorandum to the Commonwealth Electoral Officer for the State of South Australia from the Chief Electoral Officer says;

_Adverting to your communication of the 11 January 1962 of this 15th ultimo, I shall be glad to be advised of the progress which has been made in relation to the removal of names from the roll for the division of Gray in consequence of the withdrawal of the Northern Territory._

The response from the Commonwealth Electoral Officer of the State of South Australia, dated 4 April 1911 says;

_I have to acknowledge receipt of your communication of the 30th ultimo and have to inform you that notices of objection were posted to each elector enrolled for the subdivision within the Northern Territory prior to 12 February last, and all names were removed from the roll prior to 16 March last._

The records of the National Archives contain a number of telegrams and letters between the main office in Melbourne and the Adelaide office and the communications with the returning officers in the Northern Territory to get these people off the roll. Some Territorians were not too pleased at this as a letter from Joe Bradshaw Esq of Bradshaw's Run in Victoria River demonstrates. The letter dated 9 November 1910 was written to the then Minister for Home Affairs, King O'Malley, and is to be found in the National Archives. The letter reads as follows;

_Sir, Re the Northern Territory,
I infer from press notices that the residents of the said Territory will be disenfranchised under the scheme of management proposed by your Government. I respectfully suggest that either a local council be formed to assist the Administrator or that the Territory return two members of the Senate and two to the House of Representatives._
History tells us Mr Bradshaw was a man ahead of his time. Our first member of the House of Representatives, Harold Nelson, had only a limited ability to speak in the Commonwealth Parliament which was then sitting in Melbourne. It was not until 1968 that the Member for the Northern Territory was able to speak and vote in Debates as other members had since 1901. A council to assist the Administrator was not established until 1947, and the President of the Council was not democratically elected until Harry Chan in 1965. Two Senators were not achieved until 1975 and our second member of the House of Representatives did not arrive in Canberra until the seat of Solomon, which was first won by the current member for Fong Lim, in 2001.

The Politicians
I am going to give a bit of a summary of some of the recorded views of our federal representatives;
Adair BLAIN was the second member for the Northern Territory and gave his maiden speech on 13 December 1934. His speech concentrated on mining opportunities and underutilized Commonwealth leases. He wanted better surveys and some assistance from the Commonwealth;

From what I have heard in this Chamber during the last three days, it appears to me that Northern Australia is looked upon almost as a foreign land. We have heard nothing but wheat, wheat, wheat and the idea seems to be firmly fixed in the minds of honourable members that the southern parts of Australia are really the only parts of it that count. He went on to say that we shall develop the pastoral, agricultural and mineral resources of this huge area so that before very long a new light, another star, will burst in the firmament of Commonwealth activities, the star of the Northern Territory.

Jock Nelson, the son of Harold Nelson, was the member from 1950 to 1967. His maiden speech in 1950 ended with a gloomy prediction that if the Commonwealth did not wake up and develop the North, then the bombs that fell on Darwin in 1942 would next time ‘fall on the cities of the South’. Jock was also the first Territorian born Administrator appointed in 1973 and resigned to contest the 1975 election but lost in the anti-Whitlam landslide. It is interesting to note that in his maiden speech he advocated a national day to commemorate the bombing of Darwin, which Senator Crossin recently raised 61 years after Mr Nelson Jr raised it.

Jock Nelson took up where his father left off with the railroad saying, in the absence of a railway the roads will need a lot of improvement and he echoed Mr Blain’s request for better surveys to allow settlement of the land. Interestingly, in the context of arguments today over tenure for residents on Aboriginal Land under the ALRA, Mr Nelson said the following concerning the then arrangements which were said to hamper economic development;

I ask the Government to alter the tenure of land in the Territory from a short term tenure to perpetual lease. Banks will not advance money today against leasehold property in the Territory for improvements or for the purchase of stock. If the Government made the tenure of the land perpetual lease, I think that the banks would then advance money. The Commonwealth Bank could well help to finance the development of the Territory.
He praised the 1947 Chifley Government reforms establishing a Legislative Council and proposed;

*If the present government is prepared to review the activities of the Council, and to appoint a full time Minister for the Northern Territory, it should logically go a step further and bring down legislation empowering the elected representative of the people of the Northern Territory to vote in this House on all matters that come before it.*

He went on to make a case for the people of the Territory to have a say in their own affairs and be recognized as citizens of Australia.

Sam Calder’s first speech on 28 February 1967 as the third member also emphasized mineral wealth and cited a Territory population of 57 000 people of whom 20 000 were Aboriginal. Having all but given up on the railway, his speech was full of references to the need for better roads for the mining and beef industries. Tourism was mentioned and some strange development called the Todd River Dam;

*The Todd River Dam would not only serve to recharge the underground water supply in Alice Springs but would also be a great tourist attraction in this hot and usually dry inland area where swimming and boating could be enjoyed all the year round.*

He echoed the call for a full vote in the House of Representatives, which would come one year later, and made the first mention in a maiden speech of Statehood;

*The Northern Territory must be moved to eventual Statehood and self government. To this end, more autonomy should be given to the Legislative Council.*

Sam Calder was succeeded by Grant TAMBLING in 1980 who said the population was then 120 000 with a growth rate of four times the national average. On Statehood he came from the angle of the Aboriginal Land Rights Act;

*The Government must review the Aboriginal Land Rights legislation urgently and also consider the further transfer to Northern Territory control the management responsibilities for national parks which are traditionally and properly State-like functions.*

Enthusiasm for the railway was revived and it came up in the first speech of the next Member, John REEVES who held the seat for the short term between March 1983 and February 1985. Reeves’ speech on 10 May 1983 included the following;

*It was said some time ago in this House that the only way to deprive oneself of a vote in this country was to be certified insane, convicted of treason or to move to the Northern Territory.*

The Bill he was speaking to was the Bill implementing the results of the 1977 referendum to permit Territorians the vote in a referendum; the last successful ‘yes’ in a referendum and one of just 8 of 44 questions and still not giving us full rights.
**Statehood**

The next major step in the Northern Territory’s constitutional development is Statehood. Indeed the former Prime Minister (Fraser) promised the Territory in 1975 we would get Statehood by 1980. Reeves however took the view that the population should be at the level of Tasmania’s on Federation to be a State and the 120,000 in 1883 still fell short of the 170,000 he considered necessary. It is interesting because the general bench mark in the United States has been about 60,000 but Puerto Rico, with its ten million remains a Territory for the time being.

Paul Everingham in 1985 spoke of the three tiers of government characterizing the Commonwealth with the money, the States with the power and local government with the problems. He also spoke of the railway and was encouraged that the then Finance Minister (Walsh) was supportive. His speech contains a lot of political criticism of Hawke Government policies and makes interesting points about land claims under the ALRA and the consequences for future land use. He acknowledged the Indian Ocean Territories were now in his electorate for the first time and spoke strongly about the need for funding and development in the Territory. There was no direct reference to Statehood.

Warren Snowden was the Member from 1987 until 1996 and again from 1998 until 2001 when the seat of Lingiari was created and the seat of Solomon came into existence as well. Snowden’s first speech is not surprisingly centred on Aboriginal matters and his mention of Statehood is one of ambivalence and scepticism at best. It is fair to say that for him Statehood required real efforts at reconciliation and engagement to have legitimacy and he said;

> If Statehood is to be achieved in the Northern Territory it must be done with the support of all sections of the community. It would be grossly improper and unjust if Statehood meant the subjugation of Aboriginal land rights against their will … Statehood should not be provided to the Northern Territory unless it is done on the basis of equal representation with other States.

Mr Snowden remains the Member for Lingiari and has served the longest of any of the Federal Members.

Nick Dondas served for two years from 1996 and his first speech claimed that Statehood had been deterred by the 13 years of the Hawks and Keating Governments. He referred to the Fraser promise of Statehood by 1980 but indicated the Territory had resisted the offer on the basis of not being ready;

> … being new in terms of where we were going towards constitutional development, we said ‘no, we don’t want that timetable, it’s not a good timetable, we will need more time to establish our bona fides before we move into that final stage.

He mentions the confusion around the question of having 12 Senators and then expressed a view that the Territory should start with no fewer than six. This discussion is a constant deal breaker and a distraction, but are people willing to take a lesser form of Statehood and keep pursuing equality. Last year in the Forums I was talking to Aboriginal people about the ‘what if’ of Statehood in 1998 and where it might be now. This is sheer speculation but worthwhile in terms of the intervention.

Mr Dondas spoke too soon when he said;
I am happy to say that in the past 22 years not one piece of legislation passed by Territorians has ever been rejected by the Commonwealth.

Two years later the Andrews Bill inserted s.50A into the NTSGA. Tomorrow the Senate will consider a Greens Bill which would ameliorate Commonwealth executive authority but not stop a bill like Mr Andrews.

David Tollner was the Member for Solomon on its creation in 2001 until 2007. His first speech reveals;

... many, including myself, who were, and still are, strongly supportive of Statehood for the Territory, voted 'no' ... We did so because we did not like the process that led to the vote. We did not like the apparent disregard for community involvement. We did not like the sense that our vote was being taken for granted. But let there be no doubt, Territorians do want full membership of the Federation and they want their full entitlement to representation in the Commonwealth Parliament – in this place and in the other place.

He said the matter was a ‘national issue’ and more than a ‘century overdue’.

Damien Hale 2007-2010 made no mention of Statehood in his first speech

Natasha Griggs elected to Solomon last year mentioned Statehood in the closing few lines of her speech;

... stand up for the Territory’s interest in Canberra and to continue the fight for Statehood so that Territorians will enjoy the same legislative rights as people in other jurisdictions ...

I have purposely left off the Senators, perhaps controversially, but the Senate is the States House and their role is one of review.

1988 Statehood Convention
The missteps in 1998, how close did we really get? Pretty close is the answer. Shane Stone’s Radio National comments on Premiers Past broadcast during the Christmas period were interesting; he is correct to say that there was a mutual political will but the will of the people was what was not harnessed. The NT Assembly received a report in 1999 which acknowledged the mistakes made during the last concerted Statehood campaign in the 1990s. Taking note of these errors then Chief Minister Clare Martin’s 2003 statement at the Charles Darwin symposia said there will be a new approach.

In 2004 the Assembly agreed to establish an advisory committee to the Standing Committee on Legal and Constitutional Affairs, which met in Alice Springs as the Statehood Steering Committee for the first time in early 2005. In 2010 the Statehood Steering Committee concluded its work at its 27th and final meeting and last week the committee tabled the final report and recommendations towards the next part of the program.

Conclusion; there is plenty to do and people are suspicious; it’s going to cost money.
HISTORICAL SOCIETY OF THE NORTHERN TERRITORY
LECTURE SERIES 2011

Professor Dean Carson
The Northern Institute, Charles Darwin University, NT
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Presentation to the NT Historical Society on 25 May, 2011 at the Museum and Art
Gallery of the Northern Territory.

Title: ‘Population and Politics in the Northern Territory: 100 (and more) years of
will we/ won’t we?’

I am delighted and honored to be asked to come and present to this society tonight. I am
also intimidated, because I am not an historian in any sense beyond in which all social
researchers need to be aware of history.

Foreword

The following is intended as a discussion paper revealing some 'population' issues which
have been persistent in the Northern Territory since European settlement and through
the various phases of government structures. My research has mainly been about where
these issues sit now, and you can see some of the work done in this regard at
www.cdu.edu.au/population. For the historical reflections, I have relied largely on the
work of others, including the excellent publication by V.E. Fletcher (2011)
Commonwealth Takeover of Northern Territory: 100 years ago (published by the
Historical Society of the Northern Territory) which inspired my musings on how much and
how little has changed in that 100 years. Other key references include A Powell's (1982)
Far Country, a range of works by David Carment (especially 1996s Looking at Darwin’s
Past), and Ball and Langtry's (1990) The Northern Territory in the Defence of Australia. I
haven't cited these (or other relevant material from the Journal of the Historical Society of
the Northern Territory) because I want to emphasise that the wild claims and error of
interpretation are mine.

When I initially scoped out what I might do, I had visions of discussing the role of
demographic issues in decisions to promote European settlement of the NT, to transfer
from South Australian to Commonwealth custodianship, to move on to the current form
of self government, and to now talk about Statehood. Of course, a number of other
researchers have beaten me to this, and this very society has published excellent
monographs that cover these issues – with the exception of the Statehood debate which
is only beginning to get the research attention it deserves.

So what I will be doing tonight is more an exercise of reflection than of hist orical
research. I want to look at what they were saying about population back then, and how
that reflects conversations that are going on one hundred years later - And occasionally
to link to conversations that went on in between times.

The first thing to note is that the political concerns about population have been many and
varied. I've tried to put some sort of framework around them, but there is obviously much
overlap and interconnections between specific issues. For convenience I am going to
talk about a set of themes thus –

• Population growth in the Northern Territory compared with the 'natural’ or
  ‘expected' patterns of population growth elsewhere
• The Northern Territory as a population frontier. Both in terms of a frontier with Asia, and a frontier between Indigenous and non-Indigenous Australia

• The internal population debate revealing stark differences between the Centre and the Top End; and

• Population as a direct political issue – political representation and the power to persuade others of our right to determine our political future.

The population debate revolves around three axes. The first is the view that the Northern Territory needs to grow its population to achieve its rightful place in Australia and the World beyond. The second is that the Northern Territory population WILL grow to the desired extent because of certain characteristics of the place – we just need a little bit of help to put the right conditions in place. And the third is that, even if we don’t grow the population enough, the structure of the population warrants the sort of political attention that would normally only come with much larger size.

Each of these was important to the discussions about transfer from South Australia to the Commonwealth 100 years ago, and each of them was important in self-government debates in the 1970s and each remains important in the context of statehood debates today. If you want to describe an even more fundamental theme following this through – South Australia decided it could not afford to support the populating of the north which was an activity to bring benefits to the entire Commonwealth. Hence Commonwealth needed to take responsibility. The Commonwealth decided that its maintenance of dependent territories like the Northern Territory and Papua New Guinea was holding back their potential for population and economic growth. Hence self government. And now we are asking whether the population and economy have moved on to such an extent that we can afford to separate ourselves even further from federal nurturing. It should not be forgotten, however, that our failure to grow has meant that these moves in political status have been as much about old custodians trying to get rid of us as new ones being keen to take us on. Of course, I am a demographer, so this is how I see the issue! Political scientists or economists or even anthropologists may see something else.

It would be hard to argue against the claim, however, that the underlying political argument has always been that the NT needs to grow its population. It has proven very difficult, however, to grow the population simply by the ‘natural patterns’ of growth that have applied elsewhere. Those ‘natural’ patterns are all about the relationships between the relatively large urban centres which are indicative of industrial societies and the rural peripheries which provide the resource support for those centres. Von Thunen was a human geographer and economist who described this process very succinctly. In his notion of development ‘rings’, he described how, as one got further away from the urban core, the people to land ratio continued to increase. So immediately around the city were activities which required relatively little land but relatively many people. Factories, market gardens etc. Then the next ring required some land and some people – agriculture. Then the next ring required lots of land but few people – pastoralism.

This is stylistically very attractive, and has been modelled very well in Europe. There are some issues with it as a ‘natural process’ in at least two circumstances – one where we are looking at new settlement. And the other is coping with non-agrarian rural industries. Remember that Europe was essentially an agricultural society which then created cities, that then industrialised, and that then had to establish new spatial relationships with the agricultural peripheries. That is of course not the case in Australia. European settlement was an external force that did not base itself on agglomeration of existing land use in Australia. In fact, and the NT was no exception, in most places across Australia the rhetoric at least was to work outside of any of the pre-existing systems of settlement and/or land use.
Nonetheless, Von Thunen’s ring pattern has very much been the experience of Australia’s colonial cities – Brisbane, Sydney, Melbourne, Adelaide, Perth and Hobart. This is because they might not have come from agrarian organisation, but it was with agrarian intent that initial land use allocations were made. And there were quite substantial populations brought into those cities which then produced ‘surplus’ to populate the peripheries. Queensland was a little bit different because of its geographical size, but we can return to that in a moment.

The second challenge to Von Thunen is ‘where does mining fit’? In its early stages, mining needed some land and a lot of labour, so it tended to co-exist with large population centres. As technologies have improved, however, mining has come to need more land and fewer people – and has been pushed out to the edge of settlement.

What happened in the NT? There was insufficient political commitment to settling the north to facilitate a large population being sent here. Most notably we missed out on the boon of convict labour. At the same time, we attempted, with the Goyder survey here in the Top End, to allocate land to suit the ‘natural’ land use patterns described by Von Thunen. It didn’t work, not just because the land was not particularly suitable for doing what people knew how to do, but because urban settlement grew neither from an agrarian history, nor was it substantial enough in the urban core to provide a local market for agrarian activities.

What to do to grow the north when natural patterns don’t appear to work was therefore a really hot topic in the late 1800s and right through the transition from SA to Commonwealth governance.

We have tried some alternatives. One we can call the United States mid-west model – or even the Queensland model, if we wish to keep it closer to home. And that is to promote settlement along critical lines of transport and communication. These then become nodes around which you can sustain ‘natural’ rural/ regional industries. It worked in the US because there was such a large volume of people moving across the continent to the gold rushes that it was sensible for many of them to stop and settle and provide supply posts along the way. It worked to a lesser extent in Queensland because a focus there on pastoralism allowed settlement further from the core; and the maritime links that were possible to places like Rockhampton.

The biggest impact of that strategy in the NT was in Central Australia. This in part because South Australia’s ambitions never really pushed up much beyond the Centre – at least in terms of transport. Communications was different with the overland telegraph. And many specific settlements were sustained simply because they were needed to service the south’s communication with London. BUT, the spatial pattern of human traffic in Australia never matched the spatial pattern of this communications infrastructure. Human traffic was mostly along the east and south coast, with little inland tendrils from large coastal centres. Information traffic, however, was from Australia to England, and the NT was very important in that process. But the process never really attracted the number of people it may have had transport and communication flows been better aligned.

We also tried mining as a lever for population growth in the NT. This again perhaps modelled on what was happening in the US, and perhaps what had happened in Victoria, where the regional gold rush in the 1850s lead to very large population growth in Melbourne. But this was because Melbourne was there – an existing relatively large centre that provided opportunities for both those who profited from mining and those who were sent broke by it. Melbourne was a safety net and a place to spend your new wealth. The NT has not had that – the miners from Pine Creek or Macarthur River don’t re-settle
in Darwin when the mining incomes decline. And the same with the Centre and Alice Springs. Lack of size prevents attraction of population from mining.

Finally, and perhaps most successfully at least in the Top End, we used the argument of defence as both determining the need for population and providing the specific populations to be attracted. This is a model also used in Alaska, in the far north of Canada and in many colonial ‘remote’ areas.

These aspects of ‘difference’ in that we can’t have normal patterns of population growth; and ‘distance’ in that the lines of transport in particular struggle to penetrate this far – continue to inform the population aspects of debates around self government and statehood. Despite Darwin having reached the size of a large town, it continues to struggle to provide labour for regional NT. We therefore need to import much of our labour from down south, meaning that we continue to look down south for direction in terms of what skills labour has, how much we can get, and how we get it. Without increasing self-sufficiency in our labour market, we will struggle to increase our political footprint. The proportion of services that are provided directly by Federal government staff in policing, health, education, even housing and infrastructure development is much higher in the NT than it is in the states – and we don’t have systems in place to address this imbalance any more now than we did 100 years ago.

Some of the specific population issues that have recurred as a result of the failure of normal patterns of settlement here –

- Temporary stays and external workforces (because of our internal labour market inefficiencies)
- Central Australia and Top End having different demography
- Populate to defend (and with defence people)
- Need more than the share of federal $ the population would warrant because of our own labour market inefficiencies
- A belief in mining and the resources sector as a driver of population growth; and, a little tangentially -
- The fear of having vacant land – this drove the Goyder block allocation scheme and the failure of that scheme can, I think, be linked directly to the careful juggling of land releases today to ensure that the housing economy stays buoyant.

A related theme, but one that brings with it a different set of population debates, is the idea of the NT as a frontier. And it has actually been pitched as a frontier in two respects. The first was a frontier with Asia. The second is as a frontier between Indigenous and non-Indigenous Australia. I want to treat these two frontiers separately here.

The frontier with Asia has always been about opportunity and risk – but both sides of the coin have been interpreted as a need for population growth, and both have and continue to create tension around who should be making decisions for and about the Northern Territory.

On the opportunity side, our geographic proximity to Asia has been supposed to provide impetus for economic growth. Darwin in particular should serve as the logical ‘gateway’ to Asia, and the ‘spina Australis’ transport route through the Centre should be the best route for transporting goods from the south of the country to the south of Asia. To make this happen, though, we need population. We need population to produce goods for exports and markets for imports so we do not just become a transit point. We need population to construct and maintain the transport and communications infrastructure. And we need population for the simple but real effect of looking like we are worthy of the attention of both the northern neighbours and the southern Australians who have
continued to invest heavily in other transport and communication routes that bypass the NT.

The ‘gateway to Asia’ idea has been a continuous theme in the Northern Territory’s depiction of itself from Port Essington to Centralia to Weddell. That the vision has never really been realised has been a cause of puzzlement among the political and business elite in the Territory. Initially we were able to blame the failure of our sponsors to produce the north-south railway – and of course this issue was prominent in 1900, in 1911, and in 1978. For the current statehood debate, the railway has been produced – but one gets the sense that its time had passed before the first rolling stock arrived in Darwin via Alice Springs on 17 January 2004.

The practicalities of logistics and how markets emerge have also defeated the Northern Territory in its gateway to Asia ambitions. I'll start with a current day example. A businessman in Sydney wanting to get to any city in Asia for a critical meeting will arrive in Business Class on any day of the week or time of the day faster than a businessman in Darwin, despite the appearances of geographic proximity. Likewise, with or without a railway, freight from Victoria or Western Australia or even the mines of Central Queensland is transported much more quickly via ports in Gladstone, Sydney, Melbourne, Fremantle and so on than it would be when sent via the Northern Territory. The economic geography of Australia’s relationship with Asia has, from the beginning, made the Northern Territory a detour from the main game rather than a central player.

Where we have had some success in our relationship with Asia has been in the trade of people. But this has not always been considered a good thing. The Northern Territory as a ‘back door’ for illegal or unwanted immigration of Asian people to Australia has been as persistent a theme as the gateway to Asia one. The contribution of people of Asian origin to our population, particularly in the Top End, has been valued locally but frowned upon down south. Right to this day, the Northern Territory continues to argue for a different set of rules around international migration than what is offered from down south. Part of the transition from South Australian to Commonwealth custodianship in 1911 was about facilitating a stronger and more direct voice for Northern Territory interests in national migration debates. A review of NT based submissions to the recently released Federal population strategy shows that our interests in this regard continue to be somewhat different from those of other Australians and that it has continued to be difficult to get our interests heard.

The tension between gateway to Asia and the backdoor to illegal immigration is of course best represented in the history of the Makassar traders. The trade represented to many in the NT a foundation for the sort of economic and human relationship with Asia that was desired. But to those in the south it represented a threat to Australia’s border security. The interests of security defeated the interests of economy.

Nevertheless, both Asian frontier myths have benefited the NT in terms of its ambitions for population growth. At various times when European settlement here may well have collapsed, the need to stake a claim on the northern frontier has lead the powers that be, whether in New South Wales, South Australia, or Canberra to send people here. This has again continued to the present day – with a build up of defence force personnel in the NT serving to balance a record period of interstate outmigration throughout the mid and late 1990s.

There are some interesting themes that emerge at least in part from the Asian frontier topic –

- Asian immigration ‘back door’
• “Close to Asia” as a northern gateway for trade and economic development if we can have the population to facilitate it
• Populate to defend (and with defence people)
• The fear of having vacant land – which would provide specific avenues for incursion, but balanced by
• The desire for closer settlement so that defence is logistically possible
• Need more than the share of federal $ the population would warrant to secure our advantageous geographical position

The other frontier of note is of course that between Indigenous and settler Australia. There is a link between the Asian frontier issue and the Indigenous frontier issue – and that is the opportunities and challenges that have been presented by the relative diversity of the population of the Northern Territory. By the time European settlement of the Northern Territory became a core political issue in the late 1800s, the nature of the frontier contact between Indigenous and settlers across Australia had changed dramatically in other parts of Australia. By and large, the fight for better land had been won by the settlers and most of the colonies had moved on to the era of paternalism, protection, and the prediction of eradication both culturally and physically.

The Northern Territory presented something very different. Then as now, the political positioning of Indigenous people here was as “the real Aborigines” – those who had been distanced from contact and so had some legitimate claim on continuing their cultural heritages. There were, of course, very strong echoes of the policies of other colonies – children removed from their families, mustering of people into missions and assigning of their fundamental rights to churches, conscription of labour particularly in the pastoral industry, denial of access to new infrastructure and services. And of course, the closer Indigenous people were to the literal frontier – the new settlements and the transport and communication lines – the more likely they were to be exposed to these things.

However, there was also a sense that many Aboriginal people could be left alone in their own lands to pretty much do as they had been doing. The standard insertions in terms of reference for government officials that Indigenous people be allowed to roam freely and use the land as they had always used it possibly had more meaning in the Northern Territory than in other parts of the collective colonies.

Because there was less of an expectation in the NT that Indigenous people would just die out and should be gently ushered to that conclusion, other demographic issues raised their heads. As with Asian Australians, there were debates over Indigenous people as labour – could they and should they be used as labour, and if so, which populations were most important for this – young men for pastoral work, young and older women for home work?

I would like to reflect briefly on two other demographic concerns, however, because in my opinion they persist as issues to this day.

The first is the role of Indigenous women in efforts to populate the frontier. The Northern Territory, like many frontiers in the New World, was seen as ‘no place for women’ – at least when it came to European women. Its development as a defence outpost and the need for people who could conquer the landscape meant that the privileged immigrants were men. In early times of European settlement there were more than twice the number of European men as European women in the Northern Territory. Even today, the Territory wide sex ratio is about 108 men for every 100 women, and in places like Darwin where there are proportionally fewer Indigenous people, there are as many as 120 men for every 100 women.
The powers that be were, and continue to be in some respects, very nervous about European settler men cohabiting with Indigenous women. The 'purity of the race’ thing had much to do with it, as did the potential for increasing conflict with Indigenous people who may be equally unhappy with the practice on their side of the frontier. But there were deeper concerns about what the mixing of the races might mean. Would the practice lead to Indigenous people moving to the urban centres and needing to be cared for? Would it lead to increased exposure to alcohol and other nasties that were used in some cases in the trade for Indigenous women? What would be done with the children – whose responsibility would they be?

There was also a real feeling that increasing the status of Indigenous women through cohabitation with settler men would serve as a further deterrent to settlement here for European women.

The second concern was about the idea of Indigenous people’s freedom to roam. As the non-Indigenous population grew, so too did the areas where Indigenous people were not welcome. And there was an increasing concern from other colonies about the movement of Indigenous people from the Northern Territory into their jurisdictions. How could this movement be controlled?

Here we see strong parallels between those early debates and more recent ones. The movement of Indigenous people into the larger urban centres is a delicate political topic in the Northern Territory today. And we saw very recently with the flight of Yuendumu people to South Australia the angst that still exists about the Northern Territory ‘allowing’ its Indigenous people to become a problem in someone else’s jurisdiction. Indigenous people have never been as effectively demographically marginalised in the NT as they have been in the other colonies. Despite or because of this, we have struggled to place them in our discourse of development. There is an ongoing sense that ‘someone else should take responsibility’ that we see around us every day, and that no doubt has immediate and important implications for the statehood debate.

There is a terrific paper by a researcher called Weeden from the 1990s which describes the history of this exact dynamic in northern Canada. He talks about the tension between a non-Indigenous population which has high rates of population turnover and is essentially a temporary occupant of the land, and the Indigenous population which is more permanently footed in the place. He says that both the reality of this AND the mythology of this, have contributed to the struggle to identify political systems which work in the north. In Canada, of course, we have seen the experiment with Nunavut as essentially an Indigenous territory, and with Yukon and the North West Territories as something more akin to what we have here.

In summary, though, because this is a complex issue worthy of several seminars in its own right – population and politics around Indigenous people in the Northern Territory has been about a number of things –

- Whether and how to include them in our claims of population size and growth – and this has been a similar issue for Asian populations
- How to restrict mobility while minimising the costs of servicing a stationary population

And it has been closely related to the continuing critical issue of how to attract more settler women to the north as a mechanism by which to both grow population and reduce population turnover.

I want to move on now to a couple of closing issues which are no less powerful, but for which I have left myself relatively little time. The first of these is the differences that have
always existed between issues of population and politics in the Top End and in the Centre. The two regions have always had very different populations. The Top End has had bigger settlements and closer settlement. It has also had more Asian origin residents and visitors. It has been more male and more transitory. It was also more distant from the core when the core was Adelaide, and it does not have such a strong residual connection with South Australia as a result. To this day, a high percentage of new arrivals in Central Australia come from South Australia and a high percentage of people leaving Central Australia cross the southern border. Top End flows are more between here and Queensland and New South Wales (and more recently, Western Australia).

We understand of course that the political power within the NT has almost always resided in the Top End, and so it is no surprise that the population issues around political status – including those I have described here tonight – more reflect a Top End than Centralian view. The Centre, however, has had and continues to have, a much more balanced population than the Top End – balanced between men and women, between older and younger people, between Indigenous and non-Indigenous, between permanent and temporary residents.

It could be argued, and it has been argued on occasion, that the connecting of the Centre with the Top End has limited the opportunities for growth and development that the Centre may have experienced had it been able to continue as a region of South Australia. It may also be argued now that while the political interests of the Top End – actually of Darwin – would be well served by statehood, the effect may be to further marginalise the Centre. Continuing population growth is a much less realistic proposition for the Centre than it is for the Top End, so its power to persuade in a local political sphere will diminish over time rather than increase. For example, our population projections see almost 80% of all population growth in the NT occurring in the Greater Darwin region over the next 30 years.

Finally, the Northern Territory was 100 years ago, and continues to be today, caught up in national debates about how democracy in Australia should work. It is only ten years or so since we had to fight to retain our second federal house of representatives seat amid concerns that our diminishing proportion of the national population did not warrant such a representation. Remember that it was 1922 before we got our first seat amidst much the same arguments. In this very fundamental way, population and politics have been intimately entwined in the Northern Territory context.

My primary conclusion tonight is that 100 years of history has made surprisingly little difference to the nature of the population and politics discourse here in the Territory. 100 years is not a very long time in transitional history – the issues we faced in the early days of European settlement have largely persisted into the next stages of the self government journey. We continue to use our small, dispersed and diverse population as an argument for extra care and attention from the commonwealth and by extension from our State colleagues. At the same time, we continue to push our potential for growth as a reason for increased political voice. We continue to struggle to meet our own ambitions for population and economic growth – although the emergence of Darwin as something of a city state since 1978 self-government is an indicator of a changing dynamic here.

I had no intention tonight of bombarding you with demographic statistics or the details of various debates in population and politics. What I wanted to do was draw out some of the key themes and reflect on their continuing significance. I hope you have found it at least partially entertaining.
Introduction

Considered without knowledge of the events leading up to it, South Australia’s decision to surrender the Northern Territory to Commonwealth control in 1911 looks quite extraordinary. This was the peak of the era of western colonialism when the sun never set on the British Empire, and yet South Australia was foregoing the right to exercise quasi-colonial rule over almost one-fifth of the Australian continent.

Moreover, it was land still believed rightly to be rich in minerals, even though the gold rush of the 1870s and 1880s had proved something of a disappointment, at least by comparison with those in Victoria and New South Wales which had fuelled major population growth in those colonies. Powell lists the causes as “poor and elusive ore bodies, the high costs of isolation and shortage of labour, lack of capital and local knowledge”. The Territory’s gold rush had attracted a couple of thousand Chinese prospectors and a much smaller number of Caucasian diggers, but the Chinese were not welcome under the emerging White Australia policy while the white diggers failed to thrive in the steamy tropical heat and mostly left again as soon as the gold ran out.

Similar problems bedevilled attempts to mine copper, tin, mica and silver. Indeed, the Territory’s history has been one of wild hopes and dreams which too often end in despair and bankruptcy. Hence the title of this paper: Tropical Ambivalence Syndrome is a virulent, chronic and seemingly incurable disease.

South Australia’s administration of the Territory was also adversely impacted by a serious economic recession which hit that colony from 1883-1890, followed by a more general recession throughout Australia during much of the 1890s.

In the first part of the 20th century there remained a few influential South Australians who still wanted to hang onto the Territory. Powell observes:

Men of property and mercantile interests, basically the same group which had pressed for South Australian control of the Territory a generation earlier, formed that core and their views had changed little.
Some still believed in the economic potential of the territory; they still believed it would some day prove to be a profitable field for investment and speculation. This group included Adelaide-based holders of Territory pastoral leases and their main hopes rested on the completion of the transcontinental railway. They received support from others who had lost faith in the Territory yet still believed with the Adelaide Observer that such a line would become “the shortest, cheapest and quickest route to China, India, Asia, Europe and England”.

The latter justification, like many other historical events in the Territory, has intriguing echoes in the present for those attuned to listen for them. Promoters of the Darwin-Alice Springs railway in the 1990s also strongly pushed the idea that it would turn Darwin into Australia’s trade gateway to the world because it would provide a cheaper and quicker route for shipment of “time-sensitive” goods. Unfortunately this theory has so far not been borne out in practice as Freightlink, the railway’s initial operator, discovered when it went into receivership after only four years of operation. Lawyers Clayton Utz commented: “The project went into receivership because it failed to generate the revenues which were forecast by the original equity investors.”

Eventually the combination of disappointing results from mining ventures, failed attempts to implement agriculture, patchy success in pastoral enterprise and the accumulated South Australian debt from providing inadequate infrastructure and colonial administrative services to the Territory meant that most South Australians were quite relieved when Premier Tom Price clinched a deal with Prime Minister Alfred Deakin in 1907 to take the place off the colony’s hands for a total price of just £ 6,160,548.6 As Powell observed: “In retrospect it seems a bargain”.

South Australia’s extraordinarily ambivalent attitude towards its Territory sub-colony also has more contemporary echoes. In 1998 Territorians were given a chance to vote for Statehood as a result of a deal between Prime Minister John Howard and Chief Minister Shane Stone. We rejected it. Much more recently, in 2007 the NT government had administrative control over almost 50% of the Territory’s land mass removed by the Howard government’s Indigenous Intervention implemented under the pretext of the Little Children Are Sacred report, a situation which will continue for another 12 months or so.8 Most Territorians did not turn a hair. In fact most probably do not even realise that it occurred or that this extraordinary legal and constitutional situation mostly remains in place under the Rudd/Gillard government. Nevertheless, in large part as a result of those events and their aftermath, earlier this year a prominent NT-based correspondent with The Australian newspaper called for abolition of Territory self-government in a series of articles published nationally.9 They attracted little local debate.

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4 Ibid 123.
7 Ibid 124.
8 Northern Territory National Emergency Response Act 2007 (Cth).
The relevance of race

The major factors motivating Federation in 1901 are fairly clear:

There were at least four motivations for Federation: removing the divisions that separated the colonies; creating unified immigration legislation that would restrict the entry of non-Europeans; the establishment of tariff barriers to protect Australian workers and manufacturers from foreign competition; and the creation of a nation that would provide the citizenry with the opportunity to enjoy the fruits of a democratic political life. While the protectionist platform extended from barring the entry of cheap manufactured goods to barring the entry of cheap labour, at the heart of the federalist movement was the intention to establish a new nation defined in racial terms.10

Those forces also lay behind the Commonwealth’s decision to assume control of the Territory from South Australia in 1911. However in the Territory they assumed a somewhat unique and pressingly urgent form. As then Commonwealth Attorney-General Alfred Deakin explained in 1902:

We have been brought face to face by legislation already enacted with the triple problems involved in this instance - as in some others - the tropical problem, the racial problem, and the financial problem. These three are interrelated and mutually dependent. In dealing with them we are confronted - as we were in the case of our proposals in regard to the introduction of Pacific Islanders - with the question of the disposal of those lands in the extreme north of this continent, which are gifted with an enormous rainfall - such as many other parts of the continent require, but do not receive; which are fertile in soil, but are alleged to require for their cultivation the services of alien races if they are to produce the amount of wealth which is yielded elsewhere in similar climates and under similar conditions. Then, if the policy adopted by this House is that none save white labour is to be tolerated in any part of this continent, we necessarily limit the possibilities of production throughout all the tropical areas of Australia, of which Port Darwin undoubtedly is one.12

There were two aspects to the race issue in the wake of Federation: the attitude to be adopted towards “Asiatics” and how to deal with the Aboriginal “problem”. In 1911 both questions were deeply enmeshed with the eugenics movement: pseudo-scientific convictions about race and “survival of the fittest” flowing in considerable part from deeply confused understandings of Charles Darwin’s discoveries about evolution. Such sentiments were entirely respectable at the time and advocated by many prominent intellectuals. We tend to forget that it was not until after World War II revealed the tragic ultimate consequences of such beliefs that eugenics acquired a much more sinister reputation.

Whites, “Asiatics” and tropical survival

The implementation of the White Australia policy at Federation is also fairly well known. The Immigration Restriction Act 1901 was one of the first pieces of


11 With the noteworthy exception of “democratic political life” which was actually removed from Territorians by the transfer to the Commonwealth.

12 Commonwealth, Parliamentary Debates, House of Representatives, Wednesday 10 September 1902, 1 (Mr Deakin).
legislation enacted by the new Commonwealth Parliament and it had been preceded by South Australia’s rather more specifically targeted *Chinese Immigration Restriction Act* enacted in 1888. Together they succeeded in slashing the number of Chinese immigrants remaining in the Territory. As Alfred Searcy observed, “it was their virtues, not their vices, we had to fear”. Chinese immigrants would work harder and for lower wages than their white counterparts, whom they would also outcompete in business endeavours.

Simultaneously there was a vigorous debate about whether and to what extent the “White Man” could thrive in the tropics. If those who believed that Caucasians were congenitally unsuited to the tropics were correct, then the Territory’s development prospects were dim, as Deakin suggested. The new nation would not tolerate Asian migration but white Australians allegedly could not live in Australia’s north in any great numbers or for long periods of time. It was Catch 22 in the tropics. Diana Wyndham summarises the debate:

[I]n 1895 a Townsville surgeon, Joseph Ahearne ..., informed a scientific audience "that the tropics have an injurious effect upon adult Europeans [and] that their children develop into a more nervous, lighter and less enduring type". ... Dr Carroll stated that anthropology had "abundantly proved" that whites could not work successfully in the tropics. The eugenist Dr Richard Arthur ... sought opinions about this: Dr F. B. Croucher, Singapore’s Senior medical officer responded that he had "no doubt" that permanent European settlement in tropical countries was "impractical" and that white children who stayed in the tropics degenerated "both physically and morally". ...

In 1905 John Simeon Elkington ... published *Tropical Australia: Is it Suitable for a Working White Race?* This staunch advocate of public health and tropical medicine noted that some tropical areas supported “a fairly considerable white population, who do not appear to be degenerating, despite the recklessness and ignorance so often displayed in relation to personal health and habits.”14

The author’s observations from almost 30 years living in Darwin suggest that Elkington was probably closest to the truth, although the subsequent arrival of electricity and more recently air-conditioning have rendered any such debate moot.

On the other hand, it remains true that most Territorians still come from “down south” whence they return upon retirement from work, partly because their extended families are there but in many cases because they find the tropical climate increasingly enervating as they get older. Perhaps this psychological sense of impermanence and being away from “home” contributes to the Tropical Ambivalence Syndrome. Jingoistic protestations of patriotic fervour for the “great Territory lifestyle” are juxtaposed with apathetic disconnection from political and community discourse. Surveys show that Territorians are “the unhappiest people in Australia”, which the NT News instantly dismisses as “clearly nonsense”, insisting that “apart from the whingeing, we’re happy”.15

The Aboriginal “problem”

Approaches to the Aboriginal “problem” in 1911 and the preceding decades were also riven by a eugenics-influenced attitude that inevitably appears racist

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13 Quoted in Powell, above n 2, 104.
when viewed through a contemporary lens. Prevailing attitudes were characterised by a conscious dichotomy between “full blood” Aborigines who were seen as doomed to Darwinian extinction and in respect of whom the white administrator’s task was mostly conceived as “smoothing the dying man’s pillow”, and “half-castes” who could and should be rescued from the savages and turned as far as possible into de facto Europeans (or alternatively exploited as cheap domestic labour). Commonwealth Attorney-General Alfred Deakin again captures the temper of the times in an answer to a Parliamentary question in 1902:

The honourable member for Coolgardie has alluded to the possibility that hereafter the northern part of Western Australia may be grouped with the Northern Territory. Climatically they may be so grouped, and also as to their aboriginal population. The interests of the two areas are very much the same, and they could well be dealt with together. One of the reasons why they should be specially treated is that the Commonwealth Government, dealing with these areas in a perfectly independent fashion, might be able to secure to the last remnants of the aboriginal races that better treatment which every civilized people must feel is part of the “white man’s burden” cast upon us when we exploit the lands of native people.

However, at least some of the historical figures who have been pilloried as villains in fact exhibited comparatively enlightened liberal attitudes and actually confronted some of the more egregious white conduct towards Aborigines. Charles Dashwood was the Government Resident and chief judge in the Territory in the 1890s. His early period in office resulted in a reputation as a “hanging judge” who presided over 10 murder trials in a row where Aboriginal defendants received a mandatory death sentence. However, as De La Rue recounts:

When Dashwood first arrived in Darwin, he was only authorised to preside over the Circuit Court, which tried serious crimes such as murder. In 1894, however, he was also commissioned to sit in the Magistrates Court, and it was here that he became familiar with the number and type of offences being committed against the Aborigines. He heard of girls as young as ten years old being used as prostitutes; he began to comprehend the prevalence of venereal disease, alcoholism and opium addiction among the Aborigines; he gradually became aware of the number of white men up country who were abducting Aboriginal women and forcing them to perform domestic duties and to provide sexual favours in isolated huts and houses in the bush; and he heard of many instances where brutal summary justice was carried out by whites in retaliation for black misdeeds such as the spearing of cattle.

Dashwood began confronting and exposing these abuses, and tried unsuccessfully to have the South Australian Parliament enact protective legislation which would empower him to intervene in such situations.

Professor Baldwin Spencer, a renowned academic anthropologist, was the second Protector of Aborigines appointed in 1912 under the Commonwealth’s

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17 Commonwealth, Parliamentary Debates, House of Representatives, Wednesday 10 September 1902, 2 (Mr Deakin).
18 The equivalent of the Administrator under the South Australian colonial administration.
19 De La Rue, above n 6, 114.
new Aborigines Ordinance 1911 (NT). The first Protector Herbert Basedow has been condemned by Stephen Gray as a “swaggering, self-aggrandising, self-confident German” whose “most memorable recommendation concerning Aboriginal people was the suggestion that – for identification and administration purposes – they be required to wear a tattoo.”

By contrast Spencer, like Dashwood, was essentially a benevolent liberal who did good work within the constraints of his powers during the period of a little over a year he occupied the office. However, he too was a creature of the times in some of his expressed attitudes towards his Aboriginal protegees. He was hostile to the church missions not for humanist or similar reasons but because of “the perfect farce [of] attempting to teach the aborigine to read and write and quote scriptures which he can’t understand”. Moreover, he shared the unblushingly pragmatic attitude of the white pastoralists towards Aboriginal labour. In contrast to the prevailing fearful attitude towards Chinese thrift and industrious habits described earlier, Spencer noted approvingly that Aborigines “do work that it would be very difficult to get white men to do … and for a remuneration that, in many cases, makes all the difference at the present time between working the station at a profit or a loss.”

Even the notorious Protector Dr Cecil Cook, who presided over the most aggressively removalist phase of the Stolen Generations policy in the 1930s, had significant redeeming features according to Gray:

> Amid what are – by today’s standards – Cook’s deeply abhorrent ideas, it is easy to lose sight of the fact that he actually tried to promote the interests of part- Aboriginal people, at least. In 1930 he took on the powerful pastoral industry over the issue of wages and conditions for young part- Aboriginal men.

It was for this reason that, as Cook himself observed, he became the “most hated man” in the Territory.

In the wake of World War II and the Nazi genocide it unleashed, Aboriginal policy shed at least the overt rhetoric of eugenics. The Commonwealth adopted the now-discredited policy of Aboriginal assimilation from around 1950 under the tutelage of Liberal Minister Paul Hasluck. However, its benevolent if somewhat misguided integrationist intentions were largely negated and superseded by the era of “self-determination” ushered in by the 1967 Referendum, delayed granting of equal wages by the Conciliation and Arbitration Commission, the Wave Hill walk-off by the Gurindji and the advent of the reformist Whitlam Labor government.

This left-liberal approach to Aboriginal affairs, which prevailed unchallenged from around 1970 until the last decade or so, was based largely on an ethical conviction of the justice and necessity of self-determination and symbolic issues like treaties, apologies and recognition of customary law. However, at least in terms of practical outcomes it was arguably no more successful than the earlier assimilationist polices. The plight of Aboriginal people actually

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21 Ibid 66.
22 Ibid 89.
became progressively worse on many measures. Of course, some supporters of that approach continue to argue that self-determination was only ever tried in a half-hearted, piecemeal, stop-start fashion. There is probably some truth in those assertions that ATSC never had control of a wide range of service areas vital to Aboriginal health and well-being. Nevertheless, one cannot argue convincingly that self-determination policies were a raging success.

Similarly, the Howard Intervention and its re-badge by the current ALP government as “Closing the Gap” has also enjoyed underwhelming success to date despite multi-billion dollar spending, as a recent article by Indigenous legal academic Larissa Behrendt highlights:

Claims of success with the intervention are empty - and unhelpful - rhetoric. There is no evidence of improved outcomes in the government's figures. Anemia (sic) rates and malnutrition rates have increased; so too have suicide rates. The Indigenous Doctors Association have raised concerns about the psychological impact some of the policies are having on the Aboriginal people subjected to them. There have been increases in violence and school attendance rates are slightly less than what they were when the intervention was put in place.

25 It would probably be more accurate to say that the picture on nutrition is rather confused. A survey of store managers in remote communities conducted by the federal Department of Indigenous Affairs is said to have found spending on nutritious food had increased dramatically. See Patricia Karvelas, 'Welfare quarantining puts real food on table' The Australian, 4 December 2008 <http://www.theaustralian.com.au/news/welfare-plan-puts-real-food-on-table/story-e6frg6po-1111118219172 >. By contrast, a Menzies School of Health Research study examined store sales data from 10 remote Indigenous communities over approximately the same period, but found that income management was not associated with a sustained change in the sales of healthy food, soft drink or tobacco. See Julie Brimblecombe et al, Impact of income management on store sales in the Northern Territory, Menzies School of Health Research, 16 May, 2010 <http://www.menzies.edu.au/sites/menzies.edu.au/files/file/media%20releases%202010/Brimblecombe_Emargo%20Copy.pdf >.
26 In fairness, a recent evaluation study of the health aspects of the Intervention found: (1) The Howard government's initial Child Health Check Initiative substantial additional funding into NT health system for remote areas (almost $54.5 million between 2007 and 2010) was welcome. (2) However, there "was a lack of engagement with and disruption to existing systems", "insufficient consideration of the needs of the people, systems and processes already operating in the NT" and “comparison of the health characteristics of the populations who did and did not receive a health check suggests that there was little difference in the health status of the two groups”. (3) New service delivery models for hearing/ENT and dental were program successes. (4) The Expanding Health Service Delivery Initiative implemented by the Labor government under Closing the Gap is regarded as successful and better designed. see Allen and Clarke Policy and Regulatory Specialist, Evaluation of the Child Health Check Initiative and the Expanding Health Service Delivery Initiative: Summary Report, 6-9 (2011) <http://www.health.gov.au/internet/main/publishing.nsf/Content/otsih_chci-ehsdi_report >.
28 In fact the latest NT crime statistics show sexual assault rates down by 16% overall in the last 12 months but by only 2% in remote communities, while (non-sexual_ assaults are up by 10% in both towns and remote communities. See Department of Justice, Long Term Recorded Crime Statistics, Issue 32 <http://www.nt.gov.au/justice/policycoord/documents/statistics/32/Issue-32-Long-Term-Stats.pdf >.
Part of the problem, as Behrendt argues, is the “top-down”, prescriptive, paternalistic nature of the Federal programs. As Behrendt observes, successive Productivity Commission reports have found that the programs which work successfully in Aboriginal communities are those based on consultation, partnership, mutual respect and communities “taking ownership” of initiatives. That must not obviate accountability or efficiency, but the two are not incompatible.

Nevertheless, anyone who asserts that there is some short-term, magical solution that will rapidly resolve Aboriginal distress and disadvantage simply has not paid any attention to history. This author’s chronic Tropical Ambivalence Syndrome is always inflamed by pondering the moral and practical complexities of Aboriginal affairs policy.

**Defence**

Fears about the defence of Australia’s northern coastline were the other major drivers of the Commonwealth takeover of the Northern Territory. These concerns too had a racial element at their heart. Australian politicians were not concerned about any threat from competing European colonial powers but rather about nascent Asian countries especially Japan. As Powell notes:

> [T]he Federal government, already troubled by the possible threat to the White Australia policy which they saw in the Territory Chinese, reacted with official approval and unofficial horror to the smashing victory won by Britain’s eastern ally, Japan, over the Russians in their war of 1904-5. The myth of white superiority, built up over generations of European imperialism, was shattered.

Ironically, Powell also speculates, Premier Tom Playford and his South Australian colleagues may well have overlooked insisting on a legally binding timeline for completion of the cherished dream of a Darwin-Adelaide railway because they wrongly assumed that fears about Japan would compel the new Commonwealth to build it quickly. As things transpired the Commonwealth apparently felt no such urgency. South Australia eventually litigated in 1962 in a futile bid to force the Commonwealth to honour its railway building promise made in 1907 and formalised in the Northern Territory Acceptance Act 1911 (Cth). In a unanimous decision the High Court derailed South Australia’s railway dreaming. It was not to be realised for another 40 years. Windeyer J coolly concluded:

> Their question comes, it seems, to this. Does the Railways Standardization Agreement, without more, create contractual rights and duties between the State and the Commonwealth that are enforceable by a court? In my view it is only necessary to read the Agreement to see that it does not. It relates to a general plan for the development of the railway system of Australia. It allots the responsibility as between the State and the Commonwealth of carrying out various parts or sections of the plan; and it provides how the costs of doing the works are to be borne. But obviously the whole scheme would take years to complete and the Agreement does not state when any particular part is to be

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30 Powell, above n 2, 123-124.

31 Ibid.
begun or in what order the various parts should be done. That was left to be decided by the governments concerned.  

For much of the twentieth century, the railway's fate reflected the practical prominence of defence in the north generally, namely zero. It was not until the coming of World War II and a real and imminent threat from Japan that the Commonwealth felt a compulsion to relocate large numbers of defence personnel to defend the north, and even then only after briefly flirting with a strategy that would have surrendered the Territory without a fight.

A great deal of essential infrastructure was built during the war years especially the completion and sealing of the Stuart Highway, but by the same token much of Darwin’s existing infrastructure was destroyed and remained in ruins for years. Ultimately it took a decision of the Hawke Labor government in the 1980s for large-scale defence forces to be permanently deployed to the Territory. Thereafter the local economy has been heavily underpinned by the defence presence, along with mining, and tourism. There is no room for Tropical Ambivalence Syndrome about the defence presence, particularly on a Saturday night in Mitchell Street.

The Territory’s experience with Commonwealth control

Inept planning and development decisions have impacted the Territory adversely from its first settlement by South Australia. As De La Rue notes:

One of the worst mistakes South Australia ever made was to try and settle the north by a scheme based on E.G. Wakefield’s systematic colonisation plan, which had been used to settle “South Australia proper”. The Northern Territory Act of 1863, which regulated the release of land in the north, specified that land should be sold before selection, but that selection could not be made until after the land had been surveyed. Systematic colonisation had worked well for the southern colony, where the land orders were, by and large, bought by bona fide settlers, but the policy was a disaster for the Northern Territory. Most of the land orders were bought by speculators, who had no intention of moving to the north. The result was that much of the country in and around Darwin was tied up by absentee landowners who were determined to wring as much profit as possible from their investment. Darwin in particular suffered from these profiteers. The town could not grow in an orderly way when many of its allotments were left vacant and untended. ... The investors who did consent to release their land, whether for sale or for rent, did so at exorbitant rates which caused real hardship to Darwin residents.

Planning fiascos were elevated to an art form under Commonwealth administration. When Darwin’s residents began returning home in 1945 at the end of World War II, they looked forward to repairing and rebuilding their shattered homes and businesses and getting on with disrupted lives. They had been evacuated from the town a little over 3 years earlier, as Japanese forces threatened to bomb and invade after the fall of Singapore. In fact, Darwin was bombed 64 times in 1942 and 1943, although the initial bombing on 19 February 1942 was by far the worst, more intense than the bombing of Pearl

32 South Australia v Commonwealth ("Railways Standardisation case") (1962) 108 CLR 130.
34 De La Rue, above n 6, 132.
Harbour which had been perpetrated by the same Japanese carrier fleet only a few weeks earlier. Hence by 1945 much of the town was destroyed.

However, little did Darwin’s people realise that they were about to face an enemy far more pitiless but much less efficient than the Japanese: the Canberra bureaucracy. Some public service mandarin had decided that Darwin was inappropriately located on a narrow peninsula jutting out into a huge harbour, and that its destruction and temporary depopulation provided an ideal opportunity to shift the city 20 kilometres or so south around the present day suburb of Berrimah. Rather than bothering to consult with the locals, the federal government simply enacted legislation\(^\text{35}\) compulsorily acquiring all land and buildings in the settled areas of the town i.e. the CBD, Stuart Park, Parap and Fannie Bay. The Federal bureaucrats had decided to turn Darwin into the “new Canberra of the north” replete with the same short-term leases that bedevilled ACT residents.\(^\text{36}\)

Returning residents found they had no title at all to their homes and businesses, and so they could not safely repair or rebuild them. Some were granted short term revocable licences permitting them to occupy their own former properties, but many were forced simply to squat illegally in their ruined homes or in one of the many abandoned Nissen huts left behind by the troops who had occupied Darwin over the previous 3 years.

The Bank of New South Wales (now Westpac) finally lost patience with the inertia of the Federal bureaucracy and simply re-occupied and repaired its bombed-out premises at the corner of Smith and Bennett Streets without official permission, daring the authorities to do something about it. They didn’t, so more and more people began following suit.

Eventually, the Commonwealth thought better of its plan to shift Darwin south, and enacted the *Darwin Town Area Leases Ordinance 1947*. Its intention was to grant 99 year leases (“DTAL”) to residents and businesses, subject to a range of covenants and various other complex provisions. Unfortunately, very few of them were actually issued until the mid 1950s, and so Darwin’s development remained at an effective standstill. Even when Canberra did begin issuing DTALs, the formalities surrounding transfer and other commercial activity were so unwieldy and slow that business and residential growth remained stifled for years. DTALs could be transferred as of right where all lease covenants had been complied with, but it took 4 months or more to get written confirmation of compliance, and no transfer could be registered without a compliance certificate.

By the early 1960s Canberra had given local delegations for processing of DTAL transfers, and later still most were automatically converted into perpetual leases. But it was not until 1980, well after self-government, that most (those not in default of lease covenants) were converted to freehold title of the sort that most other parts of Australia take for granted. Even when this author arrived in Darwin in 1983, one of the first things I was taught about the unique aspects of NT conveyancing practice was that, if a property title was a DTAL, you had to check the government list to make sure it was not one of those excluded from automatic freeholding.

35 *Darwin Land Acquisition Act 1945* (Cth)
36 Powell, above n 2, 190.
This series of events was not just an isolated aberration on the part of Canberra. In 1973, shortly after the election of the Whitlam government, some other anonymous Canberra bureaucrats decided that Darwin’s growth and development were getting out of hand, with much land speculation on the outskirts where freehold title or other forms of perpetual lease rather than DTALs by then prevailed. They managed to convince new ALP Minister for the Northern Territory Kep Enderby to exercise his compulsory acquisition powers, again without notice or consultation with locals, and acquire an area of 32 square miles extending south from the edge of Berrimah and taking in the whole of the present satellite city of Palmerston and the Robertson Barracks military complex.

The idea was that the federal government would preside over controlled land release to ensure that adequate land was available for development at a reasonable price. It was probably a reasonable idea, but in fact no land was ever released from the 32 square mile acquisition until the new NT government elected on self-government in 1978 decided to begin building Palmerston starting in the early 1980s. The only real effect of the 32 square mile acquisition was to confirm Territorians in their intense distrust of their Canberra masters in general and the ALP in particular. Hence in part the 23 years of unbroken CLP rule that ensued after self-government.

Incidentally, Kep Enderby remains justly famous in Darwin, at least among old-timers, for his unblushing remark that the Territory should be treated as a “social laboratory” for the rest of Australia. It appears that contemporary Federal governments may have similar ideas judging by the way they have trialled Intervention measures like welfare quarantining here.

The aftermath of Cyclone Tracy in December 1974 is another farcical example of this familiar phenomenon of inept bureaucracy stemming from remoteness and lack of consultation. In early 1975 the Whitlam government created the Darwin Reconstruction Commission (“DRC”) and invested it with extraordinary powers to effect the reconstruction of the devastated city. Again, in an eerie repeat of the events of 1945, Darwin residents returned home to find that they were prohibited from rebuilding their own homes. The DRC mused at length about whether Darwin should be allowed to be rebuilt on its existing site, or shifted far inland out of the path of destructive cyclones. It took them until August 1975 to decide that rebuilding could in fact commence, and in the meantime many residents were forced to live under canvas or in other makeshift shelters. Even after the decision to rebuild had been taken, high-handed authoritarian decision-making in Canberra, combined with bureaucratic inertia, remained the norm. As this commentary to 1975 Cabinet Records held in the National Archives observes:

> Perhaps inevitably, in the months following the cyclone the Government was criticised for slow progress in re-building Darwin and for the level of bureaucracy involved. The Department of the Prime Minister and Cabinet recommended holding expenditure for 1975-76 to current contracts, to allow the Government to make clear decisions on the general position of Darwin in relation to Northern Australia.\(^{37}\)

Patterson acknowledged criticism that the DRC was making little visible progress, but argued that the public did not fully appreciate the work the Commission had done in revising the building code and undertaking a tender process for $60 million-worth of building contracts. Patterson

\(^{37}\) [A5931, CL1527, pp. 2221].
also criticised the Prime Minister’s suggestion to restrict expenditure, suggesting that the Commission would be severely criticised by the public who are already uncertain as to what action the Government is taking to keep its promise to rebuild Darwin. Mr J Hickey of the Department of the Prime Minister and Cabinet characterised Patterson’s reply as defensive in tone.

Following the recommendation of the Ad Hoc Committee on Budget Expenditures, Cabinet approved $102.6 million for the Darwin Reconstruction Commission for 1975-76, but directed another Cabinet committee to plan the future of Darwin further. As the Ad Hoc Committee put it, officials and public servants needed political guidance on such fundamental questions as Darwin’s future status. After some reluctance on the part of Department of the Northern Territory to take charge, at a meeting in October the Committee decided that another inter-departmental committee should provide a report within 30 days to provide further guidance to Cabinet.

Clearly, like Rome, Darwin was not going to be re-built in a day.

One may conclude that successive federal governments have adopted this mix of languid bureaucratic inertia and high-handed, dictatorial conduct towards the Northern Territory simply, as former Prime Minister John Howard once candidly admitted, “because we can”. There is no federal division of powers here and no fully sovereign State government to provide checks and balances or to listen to local concerns because it knows it will get voted out if it fails to do so. A distant Federal government with full and plenary constitutional powers, unconstrained by any federal checks and balances, can indeed do whatever it likes and treat the Territory as a “social laboratory”. That is precisely what the Howard government did with the Intervention, despite conceding that the situation in Territory Indigenous communities is little different from that in Western Australia, South Australia or Queensland. Of course, this is only the most recent manifestation of the consequences of remote government. South Australia’s muddling administration of the Territory prior to 1911 started the rot, and the Commonwealth’s direct rule up to 1978 merely continued a familiar story.

For those who think that the States should be abolished, and that a unitary system with a strong, benevolent central government and smaller regional or local governments would be an improvement on our current federal system, examining the history of the Northern Territory over the last 60 years provides a salutary reality check. Territorians who lived through the post-war period up to self-government know that the worst day under a state or territory government is better than the best day under remote federal rule. Subsidiarity

38 [A5931, CL1527, ff 3631].
39 [A5931, CL1527, pp. 4140].
40 [A5915, 1861].
41 [A5915, 1861].
42 [A5931, CL1527, pp. 71, 82].
43 [A5925, 4076].
45 Although the extent to which that necessarily makes a major difference can be overstated, as to which see below.
46 The Commonwealth is said to possess “full and plenary” (essentially meaning unrestricted) legislative power under Constitution s 122.
is a sound fundamental constitutional principle, though evidently unappealing to centralising governments in Canberra irrespective of party.47

Australia’s federal system is certainly in need of repair, but abolishing it would be a very bad idea indeed. No Tropical Ambivalence Syndrome on this point at least.

**Territory Statehood under a new federalism**

I mentioned earlier the fact that veteran Territory-based columnist Nicolas Rothwell of *The Australian* newspaper had recently called for abolition of self-government:

> The case today is not for statehood but for emergency administration, a royal commission into the Darwin regime’s financial management and a reshaping of the Territory: the capital turned into a city-statelet, and the hinterland declared a zone of special commonwealth responsibility -- or even placed, eventually, under international control, if Australia remains unable to meet its obligations to its Aboriginal people.48

Rothwell’s call is based predominantly on a proposition which is at the very least contestable, namely that although the Territory is generously funded by the Commonwealth in large measure to remedy Aboriginal disadvantage, successive NT governments (both CLP and Labor) have actually diverted much of that money to “pork-barrelling” urban electorates where government is won and lost:

> One feature of the NT system plays a big part in these disquieting outcomes. A valuable new book of essays edited by Rolf Gerritsen, a former senior public servant in Darwin, examines the bizarre social and economic patterns of the north. His own piece … sets out the method by which the NT government diverts Commonwealth Grants Commission funds from the priority areas of disadvantage to other, more politically useful domains. Gerritsen … writes of “an increasingly sclerotic post-colonial state” redistributing funds provided for needy Aboriginal Territorians to “the expatriates” in … The northern capital groans with leisure facilities far beyond its reasonable needs: stadia, water parks, the notorious harbourside wave pool to re-create Bondi in the tropics. This pattern of funding diversion was present long ago but it has accelerated since the introduction of the GST revenue stream. Accountant Barry Hansen, treasurer of NTCOSS, has compiled the detailed figures. They are beyond belief, and yet they are incontrovertible. Canberra provides more than 80 per cent of the NT’s annual budget of almost $5 billion and much of this inflow is specific

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47 The Oxford English Dictionary defines subsidiarity as the concept that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level. Also see A J Brown, ‘Subsidiarity or Subterfuge? Resolving the Future of Local Government in the Australian Federal System’ (2002) 61 *Australian Journal of Public Administration* 24. The article includes discussion of public opinion about local government reform, constitutional recognition thereof and the role of the States. It makes the somewhat surprising finding that around 50% of respondents appear to favour abolition of existing States in favour of a 2 tiered system consisting of just the Commonwealth and local government. Brown concludes that there has been “a slump, if not collapse, in the presumed legitimacy of the ‘state’ as a unit of self-determination within the federation”. This author disagrees strongly with abolition of existing States (or for that matter abolition of NT self-government).

remote area remediation money, intended to help disadvantaged communities. Since 2001 the NT has channelled about $2bn from Aboriginal area spending. In the latest year alone, the shortfall in welfare spending was $200m.49

In fact Hansen’s claims are anything but "incontrovertible". My own suspicion is that there probably is a certain amount of diversion of funding from bush to urban areas, but nowhere near as much as people like Gerritsen and Hansen assert.50 It depends on what proportion of urban infrastructure and services is legitimately notionally attributed to meeting Aboriginal health, welfare and other needs and demands. For example, although Aboriginal people comprise just over 30% of the NT’s population, they are around 80% of the clientele of the Royal Darwin Hospital and most if not all other public health facilities in Darwin and Alice Springs. Similarly with the Corrections, Police and Child Protection budgets. One might therefore argue that it is reasonable to attribute 80% of NT government spending in those areas as notionally acquitted against Aboriginal needs. The disagreement between successive NT governments51 and commentators like Gerritsen and Hansen appears to come down to the fact that the latter dispute the legitimacy of the extent of this notional debiting.

Fortunately a recent Productivity Commission report commissioned by the Council of Australian Governments focuses on this very issue.52 It does not bear out the claims of Gerritsen and Hansen, at least not to any significant extent. The report confirms NT government claims that it spends some 53.9% of its total budget on Aboriginal Territorians who comprise just over 30% of the population.53 Just as importantly, it shows that the NT spends a greater amount per head on its Aboriginal people than any other State or Territory.54 Nevertheless, the fact that the Territory has such a small population spread over such a vast area means that it needs to spend more per head to provide the same level of services to Aboriginal people as the larger States. The Grants Commission formula provides very generous funding to the Territory to allow for such diseconomies of scale. However, if there is any sort of diversion of funds from bush to city, it should show up in the ratio of Aboriginal/non-Aboriginal spending. On that measure the Territory ranks a little behind Western Australia and South Australia but above Queensland.55 This suggests, albeit equivocally, that there might be some diversion of funding as Gerritsen and Hansen claim, but if so it is very modest indeed.

It is also at least conceivable that the Territory’s record on funding Aboriginal programs looks better now than it did only a few years ago. Clare Martin was deposed as Chief Minister in 2007 in considerable part due to an internal revolt by Indigenous MLAs (especially Matthew Bonson) concerning her handling of Aboriginal Affairs.56 It is possible that the pattern of spending looked rather different at that time, until the Howard government’s Intervention in 2007 compelled a major re-adjustment of priorities.

49 Ibid.
51 The previous CLP government was subjected to similar accusations when it was in office. 2010 Indigenous Expenditure Report, Productivity Commission (2010), <http://pc.gov.au/__data/assets/pdf_file/0008/105983/ier-2010.pdf>.
52 Ibid 26, Table 3.
53 Ibid 27, Table 4.
54 Ibid 27, Table 4.
55 Ibid 26, Table 3.
Nevertheless, claims of neglect of Aboriginal affairs do not look substantive enough in themselves to justify the drastic step of abolishing self-government, effectively reverting to the constitutional position the Territory was in immediately after handover to the Commonwealth in 1911. As discussed, the Commonwealth’s record of stewardship of the Territory was hardly a glorious one.

This author also flirted publicly not so long ago with the possibility of abolishing self-government in its current form and exploring other governance options more suited to the unique characteristics of the Territory. However my reasons were rather different from those of Nicolas Rothwell. A succession of governance fiascos including the partial neglect of Aboriginal affairs that gave John Howard the pretext to orchestrate the 2007 Intervention; subsequent failures to remedy serious mismanagement in child protection services; seeming inability to manage the three-quarters of a billion dollar Commonwealth-funded Strategic Indigenous Housing and Infrastructure Program (SIHIP) in a competent manner; apparent inability to manage Darwin’s electricity supply so as to avoid northern suburbs blackouts of almost third world frequency and duration; and regulatory slackness leading to Australia’s worst oil spill from the Montara well in the Timor Sea: all contributed to my tentative conclusion that perhaps it was time to revisit the conferral of self-government. After all, even today the Territory’s population is smaller than many local government areas “down south”. It would hardly be surprising if the Territory was unable consistently to attract the talent needed to operate a full range of government services in a competent manner.

Nevertheless, most of the above governance crises now seem to have been brought under control. Moreover, the Henderson government actually compares quite favourably with the antics of the recently deposed New South Wales Labor government (although some may suggest this is a fairly low hurdle to surmount). Perhaps I was too hard on Labor, an unwitting victim of the Tropical Ambivalence Syndrome myself. A more balanced assessment would conclude that the Territory remains a peaceful, prosperous, progressive place which continues to enjoy respectable economic growth rates despite a development hiatus pending final investment decisions on the huge Inpex gas project. The Territory is a long way indeed from the tiny, stagnant backwater it was in 1911.

That essentially positive conclusion does not deny the need to examine the current governance model to assess whether it is best suited to the needs of a unique place like the Northern Territory. Now is the time to begin considering such questions given that the Statehood Steering Committee recently completed its final report and has recommended that a Constitutional Convention be convened by the end of 2011 to draft a constitution for a re-imagined new State. I understand that the Committee’s Executive Officer Michael Tatham recently addressed this Society inter alia on the question of Statehood.

My own view is that Statehood is both desirable and inevitable in due course, but it is not critically important that it be achieved in the near term. One may

also doubt that a proposal for Statehood for the Northern Territory would presently meet an especially favourable reception from the Commonwealth and other States in light of recent public controversies about the competence of the NT government. Resentment on the part of resource-rich Western Australia about the fairness of the current GST revenue distribution formula administered by the Commonwealth Grants Commission may also be a factor, given that the Territory is a net beneficiary of that system.

Achieving Statehood is not urgent. Although enthusiastic proponents of Statehood make much of events when the Commonwealth Parliament has overridden Territory laws, the fact remains that there have only been three such occasions in the 33 years since self-government in 1978. Moreover, although the Commonwealth probably could not have intervened through direct legislative action at least in relation to euthanasia had the Northern Territory been a State, it could almost certainly have achieved the same objective by the more indirect but equally effective means of threatening the NT State’s Commonwealth grant funding as John Howard did to all the States and Territories to get his own way on uniform national gun laws in the wake of the Port Arthur massacre. This is hardly a dazzlingly original insight. It was first advanced by Sir Alfred Deakin in a letter to The Age newspaper in April 1902:

The rights of self-government of the States have been fondly supposed to be safeguarded by the Constitution. It left them legally free, but financially bound to the chariot-wheels of the central government. Their need will be its opportunity.

The fond suppositions to which Deakin referred appear to be implicit in at least some recent pro-Statehood propaganda. It is essential to success that any renewed Statehood debate be conducted in more sober, less hyperbolic terms. A new NT State will not be safe from future Commonwealth interventions if a future federal government desires a policy objective enough to play the “withdrawal of grant funding” card. Nor will the new State receive more generous federal funding than at present, because the Territory is already funded as a State under the Commonwealth Grants Commission formula. Nor is it likely that a new State with a population of only around 230,000 people will be granted significant additional representation in either the House of Representatives or the Senate. Statehood is certainly the next logical step in the Territory’s constitutional development but its immediate significance will be largely symbolic. Nevertheless it’s at least arguably appropriate to embark on a

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58 Euthanasia, nuclear waste dump, Howard/Brough Intervention legislation.
59 It is likely that the Commonwealth could have relied on a combination of the defence power Constitution s 51(vi) and the treaties aspect of the external affairs power s 51(xxiv) to ultimately force a nuclear waste dump on any State (including South Australia despite its short-term success in resisting through Federal Court litigation) if the Howard government had not had available to it the far softer and more convenient target of the Northern Territory. It is equally likely that the Commonwealth could have relied on the race power s 51(xxvi) to enact at least most aspects of the 2007 Intervention in any one or more States. This strongly suggests that the Intervention was mostly an electorally-driven “wedge” tactic rather than a truly serious attempt at adequately addressing issues surrounding Indigenous child sexual abuse. That impression is confirmed by the fact that the Intervention made no attempt to implement any of the recommendations of the Little Children Are Sacred report, despite the fact that the Martin government’s alleged failure to do so quickly enough was the ostensible pretext for the Intervention.
fresh process now, some 13 years after failure of the last Statehood referendum.

A major problem with the rejected model of 1998 is that it was largely just an unimaginative carbon copy of the constitutions of the existing States. It was also plausibly alleged to represent a ‘hijacking’ of the envisaged democratic Statehood process by then CLP Chief Minister Shane Stone, as former Labor MLA John Bailey observed:

Chief Minister Shane Stone totally hijacked that agenda, established a Constitutional Convention that had nothing to do with all the work that had been done previously, and was then stacked in such a way that a predetermined agenda could be got through.  

The Statehood Steering Committee apparently hopes to avoid that pitfall by putting forward no agenda at all, and leaving it entirely to the proposed Constitutional Convention to draft a new constitution from scratch, albeit “informed by the views which were expressed by Territory residents” at a series of “roadshows” held by the Committee around the Territory during 2010.

However, sufficient time is needed for delegates to consider the issues carefully and produce a solid working document. The draft constitution they create will only have a chance of general acceptance if delegates feel a sense of “ownership” sufficient to go out and sell it to the community.

The drafting process for the Commonwealth Constitution, even if we ignore the redrafting which occurred at the Second Convention in 1897-8, extended over a period of some 5 ½ weeks from 2 March to 9 April 1891. The Drafting Committee, consisting of Sir Samuel Griffith (later the first Chief Justice of the High Court of Australia), Andrew Inglis Clark (Attorney-General of Tasmania) and Charles Kingston (former South Australian Attorney-General and soon to be Premier), had the benefit in its deliberations of a complete draft prepared by the Judiciary Committee of the Convention as well as another draft prepared by Clark on which the final 1891 draft appears mostly to have been based.  

With due respect to the yet unelected delegates to the Territory Convention, to attempt to finalise a complete draft in just 10 days is a tall order indeed. Such a process runs a serious risk that the Convention will produce a metaphorical camel (said to be a horse drafted by committee). Alternatively, and perhaps more probably, such a short-time frame will ensure that any delegates with a well-written draft constitution prepared in advance will have a disproportionate influence on the outcome. By way of example, even though the 1891 Convention had a significantly longer period to create a draft document, Andrew Inglis Clark arrived with a completed personal draft constitution, which partly as a result is closely reflected in the provisions of Chapters II and III of the Commonwealth Constitution and indeed to a significant extent in up to eighty percent of the Constitution we have today. A cynic might suspect that the Steering Committee recommended such a tight timetable for the First Convention to enable the current NT government to prosecute a “predetermined agenda” just as effectively though rather more subtly than Shane Stone did in 1998. More likely it flows from a reasonable acceptance that many Convention delegates will not be able to afford more than a week or so off work. Accordingly we need to find other effective ways of allowing delegates enough time ad engagement to come to grips with the very complex issues involved.

I have taken the personal initiative of creating an online People’s Constitutional Convention website where potential delegates and others can discuss the issues surrounding Statehood and even engage in some amateur constitution-drafting. To find it just Google “People’s Constitutional Convention wiki”.

Delegates to the actual Convention will need a keen appreciation of key political and constitutional issues, and a willingness to accept that practical compromise is essential to success.

First, the needs, interests and perceptions of remote Indigenous Territorians differ radically from those of the urban-dwelling non-Aboriginal population. For example, some appropriate constitutionally-based mechanism will need to be found to inhibit the undoubted risk that State governments of the future will be tempted to divert funding from remote communities to more populous urban centres where elections are won and lost. Even accepting (as I do) that the federal funding diversion allegations of Rolf Gerritsen and Barry Hansen are seriously exaggerated, there is clearly an inherent electorally-driven temptation towards bush-city funding diversion given the great disparity in numbers of seats between urban and remote regional areas.

Secondly, Aboriginal support for a new State will almost certainly require constitutional recognition of land rights, language and customary law. On the other hand there will also need to be provisos concerning customary law practices which breach Australian law and international human rights standards in a fundamental way e.g. some violent tribal punishments, some “promised marriage” situations involving under-age girls. Such issues are difficult and potentially divisive.

The Stone CLP government deliberately ducked this issue in 1998 and declined to include constitutional protection of such rights. It was widely

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64 See above n 61.
hypothesised at the time that this was a significant factor in the Statehood referendum’s defeat. The view of the two major land councils appears to have been that, in that in the absence of constitutionally entrenched guarantees, Territory governments simply could not be trusted to honour Aboriginal rights. On the other hand, the Howard federal government’s coercive imposition of the Intervention in 2007 together with the Rudd/Gillard government’s continuation of its main elements may ironically have significantly changed Aboriginal perceptions in that regard. The Commonwealth cannot be trusted either.

Thirdly, having regard to past oppression, it is likely that garnering Aboriginal support will require a more general constitutionally-entrenched bill of rights, although there is significant opposition to any bill or charter of rights among some politicians and parts of the broader community. Like land rights and customary law, this aspect could easily cause the Statehood ship to founder for a second time. Careful and widespread consultation will be required for a rights-enshrining constitution to be embraced by a clear majority of Territorians. Apart from land rights, language and customary law rights, any general human rights guarantees should be confined to those listed in the International Covenant on Civil and Political Rights, to which Australia is a signatory. General social, economic and cultural rights (e.g. those specified in


66 A very real constitutional issue here (and in relation to bill of rights provisions more generally) is as to whether a new Territory State Constitution could effectively entrench any such rights or indeed any restriction on the legislative power of the new State beyond the powers that the existing States possess. The problem arises from the combination of sections 2(2) and 6 of the Australia Acts 1986. Section 6 allows a State Parliament effectively to entrench provisions of its Constitution (i.e. make them very difficult to repeal or amend), but only those with respect to the “constitution, powers or procedure of the Parliament of the State”. Query whether bill of rights provisions would fall within any of those descriptions.

However, were it not for s 2(2) of the Australia Acts, that problem could readily be resolved by the Commonwealth Parliament entrenching the relevant provisions in the new State’s Constitution Act (given that Constitution s 121 provides that Parliament “may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.” Section 2(2) confers upon State Parliaments “all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of [the] State”. Since the powers of existing State Parliaments are not restricted by any bill of rights provisions nor indeed any restrictions as to subject matters of legislative power, there is a plausible constitutional argument that the Constitution of a new State also could not contain any such provisions, or at least that any such provisions would not prevent a subsequent State Parliament from repealing, amending or legislating inconsistently with them, irrespective of whether an attempt had been made to entrench them via s 6 of the Australia Acts or otherwise. On the other hand, there is arguably a textual conflict between s 2(2) of the Australia Acts and Constitution s 121.

For more detail on these questions, see Anne Twomey, ‘A constitution for a new state: dilemmas for the Northern Territory’ (2007) 18 Public Law Review 200.
the International Covenant on Economic, Social and Cultural Rights) should not be included. All such rights have resource implications and are in most respects a “zero sum game” i.e. for every winner there is a loser flowing from court decisions as to which such rights should have precedence. Such rights are inherently controversial, contestable and therefore political in nature. Because of their resource allocation implications, they also require detailed advice and policy input from public servants, relevant experts and industry and interest groups. These are questions for the political arms of government not the courts. Their inclusion in a draft Territory State Constitution would doom it to referendum rejection.67

Fourthly, the reality of the Berrimah Line syndrome and perceptions of Darwin’s neglect of the Alice Springs community will need to be acknowledged and accommodated in some tangible form in the new constitution.

Fifthly, the 21st century reality of federalism should be embraced. By virtue of its effective control of the national purse-strings discussed earlier, the Commonwealth can and does exercise control of the general policy direction of State stewardship of a range of areas which are ostensibly wholly State constitutional responsibilities. Education and health are the most obvious examples. Moreover, in an increasingly complex and interdependent world in which Australia is subject to a huge range of international human rights, environmental and economic treaty obligations to an extent that our Founders could not have envisaged, a compelling case can be made for a contemporary re-fashioning of the 1901 federal division of powers. One of the major benefits of a federal constitutional structure is said to be the potential for States to experiment with a range of governance structures which may then be adopted more widely if successful.68 Perhaps Northern Territory negotiators could consider offering formal recognition in the new Territory State Constitution of the Commonwealth’s over-arching policy co-ordination role, in exchange for effective guarantees of security of future federal grant funding.69 Vertical fiscal imbalance and the Commonwealth’s effective control of the national purse-strings is a much more significant impediment to genuine State sovereignty than the formal step of conferral of Statehood by the Commonwealth Parliament under Commonwealth Constitution s 121.

Finally, any Statehood proposal will have to satisfy Federal Parliamentarians, some of whom have doubts about the capacity of the Territory to govern itself competently. Some local government areas “down south” have larger populations than the entire Territory, although we have significantly more people today than either Tasmania or Western Australia did at Federation.

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67 Also see discussion above n 66 above concerning whether bill of rights provisions can be effectively entrenched at all.
69 But again see discussion above n 66 as to whether a new State’s legislative powers can be effectively constitutionally restricted at all. Perhaps in relation to doing a deal to effectively guarantee secure federal grant funding, however, the new State could refer a reasonably extensive agreed set of State powers (at policy rather than operational level) to the Commonwealth pursuant to Constitution s 51(xxxvii) (the referral power) on condition that the Commonwealth continue to fund the new State in a specified agreed manner. It is reasonably clear that a State can set conditions on any referral of power, presumably including continuing to receive Commonwealth grant funding in a specified manner. See R v Public Vehicles Licensing Tribunal (Tas); Ex parte Australian National Airways Pty Ltd (1964) 113 CLR 207, 226. For a more detailed discussion of unresolved aspects of the referrals power, see Andrew Lynch, ‘After a referral: the amendment and termination of Commonwealth laws relying on s 51(xxxvii)’ (2010) 32 Sydney Law Review 363.
No new State has been created in Australia since 1901, so this Statehood process has real national significance. The Territory has come a long way since the 1911 handover but many Territorians themselves remain ambivalent about Statehood. Reflecting on our stage of constitutional development and how we want to be governed could be a positive thing, as long as we approach it with mutual respect and a desire to find workable solutions rather than excuses for division and conflict. An imminent Territory election may make that a forlorn hope, but some of us remain eternal if ambivalent optimists.
HISTORICAL SOCIETY OF THE NORTHERN TERRITORY
LECTURE SERIES 2011

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Presentation to the NT Historical Society on 24 August, 2011 at the Museum and Art Gallery of the Northern Territory.

Title: ‘Dr John Anderson Gilruth: Victim or Villain?’

It was not long after I arrived in the Territory in 1981 that I was told the story of our first Administrator. Big, bad Dr Gilruth, I was told, was not only guilty of some shady dealings but was also such a tyrant that the people of Darwin eventually rose up against him and forced him to leave. I know there are at least a few people in Darwin who disagree with this version of events, but the legend seems to be firmly embedded in the local folklore. In order to explore the question, I intend to give some background information on Gilruth’s life before he was appointed Administrator of the Northern Territory. I will then try to describe his personal attributes, especially as they pertain to the history of his administration of the Northern Territory. The serious flaws in the way the Commonwealth government set up the administrative system in the Territory will be described and the way these contributed to Gilruth’s problems will be explained. I will then narrate the history of the growing conflict between Gilruth and the various sections of the community of Darwin which finally resulted in the so-called “Darwin Rebellion” and Gilruth’s recall to Melbourne. Gilruth’s story does not end with his departure: it continues with the appointment of Mr Justice Norman Ewing as a Royal Commissioner, his inquiry into Gilruth’s administration and the puzzling report he produced of his findings. After discussing Ewing’s report, I will close by giving my opinion on the question “Was Gilruth a victim or a villain?”

John Anderson Gilruth was born in Scotland in 1871. He was the son of a struggling tenant farmer. His mother was a teacher, and John excelled at his studies. By the time he was sixteen, he was a star pupil at the Glasgow Veterinary College and he was admitted as a member (with distinction) of the Royal Veterinary College when he was twenty-one. It seems that Gilruth was imbued with a sense of adventure and enjoyed a challenge because, instead of accepting a safe job at home in the United Kingdom, he started his career as a veterinary surgeon with the New Zealand government. Over the next fifteen years he undertook further study, received various professional awards and rose in the ranks of the New Zealand public service. However his blunt manner and uncompromising attitude created tensions and even enmity in the New Zealand bureaucracy and, in 1908, he moved to Victoria to establish a veterinary faculty and a related research institute at the University of Melbourne.

When control of the Northern Territory was transferred to the Commonwealth government in 1911, the politicians and bureaucrats were determined to make a full investigation of the country before deciding on a policy for developing the region. The government recruited Gilruth to be part of a “Scientific Party”, led by anthropologist Baldwin Spencer, which visited the Territory in 1911 to examine the country and make recommendations on strategies to promote enterprises such as mining, agriculture and the pastoral industry. According to Gilruth’s biographer, the expedition ‘fired him with
enthusiasm" and in February 1912 he agreed to become the inaugural Administrator of the Northern Territory.

Superficially, the government had chosen an ideal candidate for the position. Gilruth was highly intelligent with a strong scientific background which would stand him in good stead when new projects were introduced to foster economic development of the Territory. His employment with the New Zealand government had also taught him how to work within a bureaucracy. On a personal level, he could apparently be charming, and amongst his scientific colleagues, he was known for his ‘personal kindliness and loyalty which endeared subordinates to him.’ It may not have had any bearing on his appointment, but his physical appearance was also a bonus. Gilruth was a tall man with an austere, dignified air about him which was exactly suited to what was, in effect, a vice-regal position.

However, Gilruth had some character traits which made him an unsuitable candidate for a job where negotiation and compromise were essential. For one thing, he was an extremely proud, arrogant and stubborn man. He would never admit a weakness or fault. This was evident, for example, when he was criticised for promoting Constable Stretton over the heads of more experienced officers. On the strength of his trips to the hinterland, he claimed that he knew the men involved better than the Police Superintendent and that he was ‘an expert’ on the matter. Gilruth was also notorious for his lack of tact, and negotiation and compromise were anathema to him. Another quirk of his nature was his ‘penchant for pomp and circumstance’. He enjoyed to the full the Administrator's title of “His Excellency” and, according to Paul Rosenzweig, he wasted no time in insisting that he be appointed an officer in the Australian Military Forces. He became a Temporary Colonel on the Unattached List in May 1912 just one month after arriving in Darwin. It is easy to imagine that Gilruth’s preoccupation with his high status would give rise to scornful resentment among local residents.

Clearly these characteristics made him unsuited to occupying a leading position in a small parochial community where the European section was frequently divided by various petty jealousies and resentments, where the Chinese residents were being more stringently discriminated against because of the White Australia policy, where the Aboriginal people were being strictly regimented with heavy-handed paternalism, and where the various coloured inhabitants were attempting to live their own lives free of excessive control by the authorities.

However, the problems experienced in the Territory in the first ten years of Commonwealth administration were not due to Gilruth’s character defects alone. A number of federal policies caused problems in the Commonwealth’s new acquisition, the most notable being the White Australia policy. The restrictions placed on Asian residents, most particularly the Chinese, forced many of these people to return to their homelands, thus depriving Darwin – and the Territory in general – with a much-needed population, a cheap, reliable labour force and basic necessities such as fresh fruit and vegetables. Also, the attitude shown by the federal politicians, by the Melbourne bureaucrats, and by many of the civil servants who arrived in Darwin to work for the Northern Territory Administration, was one of disdainful superiority, and, not unnaturally, the local residents resented it. They particularly resented the fact that their opinions were not sought on any Territory matter at all, and if they proffered one, it was brushed aside and ignored.

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3 J A Gilruth to Prime Minister Hughes, 24 June 1920, p. 11, NAA: A1, 1930/6111.
Another serious error committed by the Commonwealth government in its dealings with the Territory was that it disenfranchised the people when it took control in 1911. Under South Australian administration, Territorians had two members of Parliament representing their interests in Adelaide. The Commonwealth refused to grant this right, arguing that the excessively small number of voters in the Northern Territory would mean that a vote in the Territory would be worth many times more than a vote by an inhabitant of a more populated state.

Perhaps the most serious fault, however, was the administrative arrangements set up by the bureaucrats in the Department of External Affairs in Melbourne. The Territory was to be governed as a colony, but the government repeatedly assured the politicians and general public that the Administrator would have an extensive degree of autonomy and the province would not be controlled by remote bureaucrats unfamiliar with local conditions. The Departmental staff in Melbourne, they said, would merely facilitate matters which would be decided upon by the Administrator who was answerable to the Minister. The Minister in his turn would be responsible for the general policy regarding the Territory. This arrangement never worked. The Department’s Secretary, Atlee Hunt, had far more influence and control than this scenario implied, and successive Ministers readily allowed lobby groups and individuals to contact them personally about Territory matters, and they would subsequently interfere and issue orders about operational practices and procedures.

To make matters worse, the Administrator was not in complete control of all the public servants in the Territory. When Gilruth took charge of the Northern Territory Administration in 1912, three key departments – Post and Telegraph, Public Works, and Customs – were independent of his supervision and answered to their head offices in the south. This immediately caused friction, especially between Gilruth and the Post and Telegraph Department in Adelaide. The situation worsened in 1917 when control of the railway was taken from Gilruth and handed to the new Commonwealth Railways Commissioner. Gilruth protested vehemently about this, arguing with some justice that the Northern Territory Administration should control all means of communication as they were vital elements in any plans to develop the region. His protests fell on deaf ears, and it is not surprising that when the railway extension to Katherine was formally opened in December 1917, Gilruth refused to attend the ceremony.

This divided rule caused another problem: the public servants employed by the Northern Territory Administration were employed under far less favourable conditions than the officers working in the three independent departments in the Territory. To make matters worse, officers in the Northern Territory public service could not transfer to government jobs in the south without losing rights such as leave entitlements which they had earned by working in the Territory. Gilruth’s staff therefore had a legitimate cause for complaint which made his job as Administrator much more difficult than it should have been.

It is probably fair to say that the politically aware residents of the Territory looked forward to the advent of Commonwealth control when they attended the transfer ceremony on 2 January 1911. But by the time Gilruth arrived in Darwin fifteen months later, people were becoming disillusioned with the new regime. Many of the changes they saw were unwelcome ones. All the government seemed to be doing was to flood the north with young, brash, supercilious civil servants; local residents were given no chance to apply for any new positions in the Administration; and the most significant government expenditure they saw was being devoted to the Aborigines. The government had not yet issued a comprehensive policy for the Northern Territory and it seemed to be concentrating almost exclusively on developing agriculture in the Top End. As all local residents knew, agricultural enterprises had little chance of success because there was

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5 NAA: CP359/1, ITEM 8 – [Personal papers of Prime Minister Hughes].
no significant local market for the produce and no adequate transport such as a railway to take it to outlets in the south. The shortcomings in these early attempts at administration by the Commonwealth brought home to the Anglo-Australians in the community how much they would suffer by not having the voting power to influence government policies and practices.

Thus, Gilruth arrived in a town which was already bristling with resentment. He could perhaps have smoothed over any unpleasantness if he had taken the trouble to do so, but instead he proceeded to alienate all sections of the community. During the first eighteen months of his administration, people of every race and from all classes in Darwin suffered a series of rude shocks about the realities of the new regime. Every resident who had a financial and/or emotional stake in the town, for example, must have been alarmed when Gilruth made it quite clear that he did not like Darwin, and he recommended in his first annual report and elsewhere that the Territory’s capital should be moved to “Bitter Springs” which is now known as Mataranka.

Battle lines were soon drawn between Gilruth and the leading White businessmen and professional people in town when he began to make unilateral decisions without any attempt to consult with bodies such as the Local Board of Health. With some justification Gilruth criticised this body for its lack of decisive action on health hazards in the town. For years the Board had issued warnings to residents who contravened the health regulations but it never bothered to follow these up to ensure that the faults had been rectified. Board members also tended to turn a blind eye towards premises belonging to their friends. They were able to get away with this behaviour because they were answerable to the remote Central Board of Health in Adelaide. Gilruth’s solution was simple: within two months of arriving in Darwin, he had all the powers of the Central Board of Health transferred to the office of the Administrator. The Local Board was now answerable to Gilruth who, with the help of his Health Officer, Dr Holmes, ruthlessly began to clean up the insanitary sections of the town.

Gilruth’s decision to build houses at Myilly Point to accommodate newly-arrived civil servants was another bone of contention. Members of the District Council were furious. Here was yet another example of an autocratic government stealing what Council members considered were community park lands. These lands belonged to the people of Darwin, they claimed, and as such they were under the control of the District Council to dispose of as it wished.

On a more personal level, Gilruth began a campaign against a number of long-term residents in Darwin. C J Kirkland, the popular owner-editor of the *Northern Territory Times*, was one of the first to come under fire. Gilruth criticised the paper for its lack of substantial national and international news and bemoaned the fact that the government had recently renewed its contract with Kirkland to print the *Government Gazette*. He later threatened to cut off the contract if the paper did not improve. In 1913, Kirkland was gaoled for contempt of court after he criticised Judge Bevan in the *Times*, and he was the first person to be gaoled for refusing to pay his taxes in protest at the Territory’s lack of representation in Parliament. This seemed very like persecution to Darwin residents, and Gilruth’s dismissal of the Government Secretary, Nicholas Holtze, who had grown up in Darwin, and his replacement by Gilruth’s personal assistant Henry Carey, seemed equally unfair.

Non-European residents in the Northern Territory also had cause for complaint in the early years of Commonwealth administration. The Commonwealth’s takeover of the Territory hit the local Asian community hard. Suddenly, Asian workers were denied any government jobs, they were banned from residing on any gold mine, fishermen lost their licences and many market gardeners were evicted from the land they leased from the government. Many Asian residents were forced to leave the Territory and the
government assisted in this evacuation by willingly paying the fares of any old, indigent Chinese who wished to return home. Gilruth expressed some sympathy for these people, noting that they could not be left to starve, but this did not stop the Administration from carrying out two projects which increased their hardships. Within the first year of Commonwealth administration of the Territory no Chinese person was permitted to employ an Aboriginal man or woman, and Darwin’s Chinatown was declared a prohibited area for Aborigines. Chinese families were thus deprived of the domestic help Aboriginal residents provided for townspeople, and the Chinese merchants lost their labourers and delivery men. The Administration then authorised the destruction of insanitary housing in Chinatown and many Chinese and other Asians were forced to move out to the area called “Police Paddock” where their properties formed the nucleus of what was to become the suburb of Stuart Park. Matters were equally difficult for the Aboriginal inhabitants. The new regime was determined to get rid of the unsightly, insanitary camps littering the bush around Darwin, and they were convinced that Aborigines must be placed under strict control. They established the Kahlin Compound and over the next few years, created regulations which increasingly restricted the Aborigines’ freedom of movement within Darwin.

It is important to recognise that most of the actions taken by Gilruth and his staff were based on what were then considered sound reasons. Some of them we now consider deplorable, but others, such as the destruction of insanitary housing and the annexation of land to build houses for government employees were, I believe, sensible measures for the Administration to take. The problem in many cases was not what was decided upon, but the way in which the decisions were carried out.

Gilruth’s disregard of local sensibilities and his refusal to negotiate peaceful settlements of contentious issues had a disastrous effect on industrial relations in Darwin during his administration. Just a few short months before Gilruth arrived in the Territory, the first workers’ union was established. Just a few short months after he arrived, he announced that in future government workers would start work at 7.30 am and finish at 2.30 in the afternoon. He had not consulted with the union over this, and there was an immediate outcry, many workers who lived in hotels or boarding houses claiming they could not obtain breakfast at such an early hour. The workers continued to defy Gilruth over the issue, and the new hours were abandoned the following year. This defeat must have been a bitter pill for proud Gilruth to swallow, and perhaps it explains, in part at least, why he consistently showed an obstructive attitude and a complete lack of sympathy for the workers’ demands when dealing with future industrial troubles.

Gilruth’s relationship with many of his senior staff rapidly deteriorated too. Dr Jensen, who came to the Territory as Director of Mines in 1912 went so far as to charge Gilruth and the Northern Territory Administration in general with forty-three offences, including some shady dealings in mining ventures. The matter was investigated by a Royal Commission under Barnett who dismissed all the charges. As a result of these events, Jensen lost his position in 1916 and one author claimed that ‘the removal of Jensen signalled the virtual end of mining in the Territory for decades to come.’

Gilruth might have survived the constant conflicts which arose during his administration if it had not been for the arrival of a new unionist. Harold George Nelson was an engine driver, and he brought his wife Maud and their five children to Pine Creek in 1913. They moved to Darwin in the following year and Nelson became the organiser for the newly-established Darwin branch of the Australian Workers’ Union. This was the year that Vesteys began building their meat works on Bullocky Point, and Nelson was instrumental in.

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6 “Workers’ Union,” Northern Territory Times and Gazette, [hereafter NT Times], 23 December 1911.
in organising a series of boycotts and strikes aimed at raising the wages of the meat workers. Needless to say Gilruth sympathised unequivocally with Vesteys over the dispute.

According to at least one historian, Gilruth and Nelson detested one another from their first meeting. Whether this was true is debatable, but, when the union won its fight for higher wages for Vesteys workers, it can, I think, be assumed that Gilruth would hold a grudge against Nelson. The reason for Nelson’s determination to get rid of Gilruth is less clear. Did he really believe that this was the best thing for the people of the Northern Territory, or was there a strong degree of personal spite in his campaign against Gilruth? Whatever his motives, Nelson worked assiduously to get rid of Gilruth. He was ably assisted in this by local reporter, Fred Thompson, whose articles about Gilruth became increasingly virulent as the years went on. The *Northern Territory Times* was littered with scornful and scurrilous epithets referring to Gilruth in such terms as ‘the autocrat of Government House’, ‘the big boss blunderer’ and ‘His Obstinacy’. On one occasion the Gilruth Administration was described as ‘a vile and evil smelling fungus upon the sacred name of liberty and democracy’.

In 1915, the government decided to nationalise the liquor trade in the Top End in an attempt to curb excessive drinking in the Territory and to prevent the sale of alcohol in sly grog shops. All the hotels in the Top End were purchased, and the government set up a Liquor Store in Darwin. This situation was one which Nelson exploited to the full to cause as much trouble as possible for the Administration. His efforts to get rid of Gilruth reached a climax when public complaints about the State Hotels and the price of liquor became more strident. On reading reports of the events leading up to the end of the Gilruth administration it seems more than likely that Nelson carefully orchestrated the public protests to force Gilruth out. His campaign culminated in a protest march on 17 December 1918, when a large number of people broke into the grounds of Government House and demanded that Gilruth leave the Territory. After burning Gilruth’s effigy on the area now known as Liberty Square, the protesters dispersed, only to gather again on Boxing Day where they moved a motion to ask the Acting Prime Minister to recall Gilruth. The unrest continued into the New Year, and Gilruth was finally recalled to Melbourne. He and his family left the Territory on 20 February 1919, never to return.

H E Carey, Judge Bevan, and R J Evans were the three most senior government officers left in Darwin after Gilruth’s departure. They were all Gilruth’s friends, and the unionists, led by Nelson, succeeded in getting rid of them eight months after Gilruth was recalled. The Commonwealth government finally decided that another Royal Commission was necessary and appointed Judge Ewing to conduct the inquiry into the Northern Territory Administration. After hearing evidence in Melbourne, Darwin, and elsewhere, Ewing presented his report to Parliament in April 1920. This report was highly critical of Gilruth and his colleagues, and where Ewing could not cite discreditable facts, he damned them by innuendo. But Ewing’s conduct of the inquiry came under scrutiny and some serious questions arose about his objectivity. For a start, Ewing paid a substantial retainer to Gilruth’s enemy, Nelson, for him ‘to represent the people of the Northern Territory’. In a most extraordinary oversight, considering that much of the conflict arose between the Administration and the unions, Nelson was not called upon to give evidence. In addition to this, Ewing dispensed with the services of his Secretary before he wrote the report, and, while writing it, he did not refer back to the transcript of evidence taken during the...

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9 “Self-Determination,” *NT Times*, 9 February 1918.
11 “The Hotel Employees’ Lock-Out,” *NT Times*, 16 November 1918.
12 “News and Notes,” *NT Times*, 4 February 1915.
13 C. M. Bunn, “Gilruth – Administrator of the Northern Territory: Why did he Fail?” *Australian Veterinary History Record*, 40 (2004), p.15. The sum paid to Nelson was almost three hundred and fifty pounds.
hearings. The report was therefore full of anomalies and Gilruth, Carey and Bevan, along with their lawyers, wrote letters of protest to the government, giving details of the mistakes and misrepresentations. The matter was referred to the Attorney General’s Department and the opinion from its officer was that Ewing had indeed made many errors of fact in the report and it was allowed to fade into obscurity with no action taken.

The ignominious end to his administration of the Northern Territory must have affected Gilruth, and he spent the next ten years as a private consultant before he was recruited to the CSIRO where he took charge of the Division of Animal Health. By the time he died in 1937, his reputation was restored to its former glory as a result of his brilliant work on animal breeding in tropical environments.

Was Gilruth a villain? I think most people would agree that he was temperamentally unsuited to his position as Administrator, but I for one do not believe he was a villain. The rumours which circulated about the motives for his actions and his self-interested use of his position to profit himself and his friends were, as far as I am concerned, just vicious rumours. Most of the failures of the first years of Commonwealth administration can be attributed to factors other than Gilruth’s shortcomings. Alan Powell summed the situation up nicely when he wrote that ‘given the conditions he [Gilruth] faced it is unlikely that any leader short of the Archangel Gabriel could have brought peace and prosperity to the Northern Territory.’

Was Gilruth a victim? Yes, I believe he was. On reading the evidence of what went on in the years of Gilruth’s administration, I think that Nelson carried out a carefully orchestrated campaign to foster public anger against Gilruth to such an extent that his position in the Territory became untenable. I further believe that Nelson somehow managed to persuade Ewing that Gilruth was the villain of the piece and the respected judge compromised his objectivity by publishing damaging innuendos about Gilruth and his friends in his report.

Whatever the truth of the matter really is, Nelson’s version is the one that has prevailed and I am sure that Gilruth will remain in our local legends as one of the most colourful – and one of the most villainous – of our Administrators.

Thank you.

Title: 'Territory Education under Commonwealth Control 1911-1978: A brave new world?'

In order to determine whether or not Commonwealth Control of Territory Education delivered a ‘Brave New World’, it is necessary to look at education in the Northern Territory, prior to 1911.

Pre 1911
In the first 35 years of Government Resident’s Reports to the South Australian Parliament, no reference was made to education at all. It seems that officially, little was thought of education unlike mining, agriculture and pearling which all contributed to the development of the Territory. However, education was happening at a grass roots level. The Northern Territory Times and Gazette has almost 1800 references to a school and schools in Palmerston during this period.

So one must ask ‘Why the dearth of information in the annual reports?’

Perhaps we are seeing here, the beginnings of a problem that still bedevils us – an apathy towards public education by those with the power to improve it. Or was it class consciousness in the embryonic settlement? The children of the ‘silvertails’ all attended schools in Adelaide or Melbourne, whilst the children who ran free in the ‘Camp’ were the sons and daughters of artisans and labourers.

William Whitfield had commenced lessons for the children of Port Darwin as early as 1873. Early accommodation was in the Government stables at Goyder’s Camp on the saddle between Fort Hill and the site of the Residency. Each pupil was allocated 8 inches of bench space, and prior to lessons commencing the stables had to be mucked out and stalls dismantled. In mid afternoon, the pupils set about re-positioning the hurdles to re-form the horse stalls. Little wonder then, that numbers decreased and ‘no real progress had been made’.

Not to be daunted, in January 1874 Mr Whitfield advertised that ‘a public school for boys and girls will be opened on Monday morning at 9.0 o’clock in the Wesleyan Church building, the use of which has been kindly granted free by the Rev. Mr Bogle and the trustees.’ But on 20 February 1874, the Northern Territory Times and Gazette reported that ‘the Palmerston school is not so much used by the people as it might be. There used to be a great deal of complaint before the school was established and now the least the public can do is support it’.

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1. Government Resident’s Reports 1870-1905 viewed at National Archives Darwin
2. Northern Territory Times and Gazettes 1870-1905
3. Northern Territory Times and Gazette 19 December 1873
4. Northern Territory Times and Gazette 5 January 1874
5. Northern Territory Times and Gazette 12 January 1874
6. Northern Territory Times and gazette 20 February 1874
By April 1874 Mr Whitfield had moved on to become secretary of the fledgling Palmerston Town Council, and Mrs O’Halloran advertised that she would be opening a new school – the Palmerston Academy – in Cavenagh Street7.

However, things were stirring in the rest of Australia. Henry Parkes had gained acceptance for the notion of ‘free, compulsory, secular education’8, and the Government Resident advised the people of Palmerston on 9 September 1876, ‘that the Council of Education in Adelaide, had appointed Mr John Holt to be the teacher at the Palmerston school’9. The Government Resident also reminded parents of the necessity of sending children to school in order to prevent the application of the compulsory clause of the Education Act No 11 of 1875, being enforced in Palmerston. There were 32 children listed on the roll10.

Barely six months (August 1877) into his tenure as Master of the Palmerston School, Mr Holt was faced with the perplexing question of whether he must enrol Aboriginal children. He appealed to the Board of Education in Palmerston. Needless to say, their next meeting was quite lively11.

The Government Resident and the Teachers reported against the admission on the grounds that the parents of white children would probably not allow them to attend. The President Mr von Treuer expressed doubts as to the propriety of allowing aboriginal children to attend public schools under the Council, but Mr Barlow could not see how such children could be excluded. Under the compulsory clauses they would be required to attend school. The other members of the Council did not see why aboriginal children should not be allowed to go to school providing they were clean in themselves and properly clad. Mrs Glyde moved and Dr Campbell seconded “that aboriginal children be allowed to attend public schools.” Mr von Treuer’s hand was the only one held up against the motion12.

In the first official mention of schools or education in the Northern Territory, the Government Resident, in his 1905 Report, stated that two new schools had been opened during the year – one at Pine Creek and the other at Brock’s Creek, but with perhaps a hint of disdain added that hardly had the building been completed at Brock’s Creek, than the population moved to another section of the goldfields, so a travelling teacher was appointed to service the goldfields. A new private school under Miss Harrison was opened in Palmerston in the Government building on Beach Road, and another under Miss Cleland continued to operate. The Palmerston school was conducted by Mrs Pett13. And so we had 3 schools operational in Palmerston in 1905.

Nothing more is seen of education in the Government Resident’s Reports until the Commonwealth take-over of administration of the Territory in 1911, which suggests a dis-interest on the part of the South Australian officials.

The impact of the new Federation of the Commonwealth of Australia and the passing of the White Australia Act had serious repercussion for the Northern Territory. Mrs Pett’s attendance rolls, which once showed the number of pupils, their grades and average attendance, were from 1901 broken down into ethnic origins of the pupils14. Thus we

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7 Northern Territory Times and Gazette 10 April 1874
8 Education Act 1872
9 Northern Territory Times and Gazette 9 September 1876
10 ibid
11 Northern Territory Times and Gazette 11 August 1877
12 ibid
13 Government Resident’s Report 1905, viewed at National Archives Darwin
14 GRG 18/419 Public School Palmerston Returns July 1899 – December 1904, viewed at State Records Office of South Australia, Adelaide.
have students classified as ‘British’, foreign, half-caste, quadroon and octoroon, and so the beginnings of official obsession with race, courtesy of the White Australia Policy.

Post 1911

On 1 January 1911, the Northern Territory was separated from South Australia and transferred to Commonwealth control. Human nature does not seem to change, and like new controllers and administrators of today, the acquisition of the Northern Territory was accompanied by a flurry of activity. Great changes in education were mooted, but implementing them was easier said than done. Given the limitations of this document, only secondary education will be examined in any detail.

1911-1921

And the Administrator’s Report of 1911\(^\text{15}\), states that although the missions were providing education for aborigines, these hardly filled requirements. The establishment of Government schools, farms and other educational institutions are a must, the report stated. Furthermore it is important that aborigines be taught that if they would eat, they must work’. The Administrator went on to report that the Public schools had maintained their efficiency and standards were raised in 1910\(^\text{16}\). White ants had attacked the school building in Palmerston, so infant classes were transferred to the teacher’s residence\(^\text{17}\). Carpentry and plumbing classes were to be instituted at the school. And school hours were altered. Formerly the same as South Australia, they would now start at 8.00am and finish at 12.30pm, to suit the conditions of a tropical climate\(^\text{18}\). It is topical too, to mention that it was at this time, the Police Force changed from Navy serge to khaki cotton, for exactly the same reason\(^\text{19}\).

In 1912, periodical medical and dental inspections were carried out and the teacher Mr Stewart resigned; his place being filled by a relieving teacher from Queensland, and so begins Territory Education’s relationship with Queensland – a relationship that lasted for almost 30 years.

From the time the Commonwealth assumed responsibility for Territory education, teachers from Queensland were recruited to teach in the Top End\(^\text{20}\). Prior to 1911 when under South Australian administration, teachers were recruited to the Top End from South Australia. Almost three years had passed under the new regime, and not one student from the Darwin Public School has passed the external exams.

In 1913 Mr J L Rossiter came to shake things up. His task was to inquire into the reason for the abysmal exam failure and to make recommendations. He discovered that the pupils were being taught the Queensland curriculum by Queensland teachers, but examined on the South Australian curriculum under South Australian conditions\(^\text{21}\). He standardised the curriculum, so that all schools north of Tennant Creek taught the Queensland curriculum and all schools south of Tennant Creek taught the South Australian curriculum. Schools south of Tennant Creek would be staffed by South Australian teachers, whilst those north of Tennant Creek would be staffed by teachers from Queensland.

Mr Rossiter established advanced classes and made arrangements for periodic inspections by a Queensland Inspector, who was to examine and report on schools and

\(^{15}\) Administrator’s Report 1911, viewed at National Archives Darwin

\(^{16}\) ibid

\(^{17}\) ibid

\(^{18}\) ibid

\(^{19}\) ibid

\(^{20}\) ibid

\(^{21}\) Administrator’s Report 1913, viewed at National Archives Darwin
the work of teachers. A new public school was opened. The school building and
surrounds left little to be desired. The Administrator opined that the conditions under
which the children worked, compared favourably with those of the best class in the
south.

And in order to foster scholarship, His Honour the Administrator Dr Gilruth, had a special
gold medal struck in Melbourne and shipped to Darwin. The medal was to be presented
to the top student in the Northern Territory. Dr Gilruth was anxious to promote
scholarship in the embryonic higher education section of the school. The inaugural
medal was won by Flo Pott, with excellent passes in English, Latin, History, Geography
and Arithmetic. Flo also received a special commendation for her essay on the role of
the Commonwealth in the Development of the Territory\textsuperscript{22}.

The Administrator’s Medal is still presented – though not in its gold form. Today it’s a
paper certificate presented at a reception at Parliament House. And although it is still
prestigious to be named ‘top student’, 19 other certificates are also presented, so that
the top 20 students are now honoured.

There was much agitation when Flo was presented with her medal, as many considered
that ‘it was wasted on a girl, who would only go and get married’\textsuperscript{23}.

Exactly 90 years later in 2003, another girl won the Administrator’s Medal. She was
Elisse Zarimis who achieved perfect scores in Biology, Chemistry, Mathematics, Physics
and a near perfect score in English. Elisse went on to study aerospace engineering at
Sydney University where she was awarded the Dean’s Prize during each of her years there.
On completion of her studies at Sydney, Elisse was awarded a scholarship to
undertake Ph. D studies at Harvard University in the US\textsuperscript{24}. As a footnote to this story, Flo
Pott’s gold medal is still in safe hands with her grand-daughter in Adelaide\textsuperscript{25}.

In 1913, a new school curriculum was introduced where a course of elementary
instruction in personal and general sanitation and hygiene, in hot climates was taught\textsuperscript{26}. Kahlin beach village was established and the school at Kahlin enrolled 27 children who
were taught ‘useful pursuits’\textsuperscript{27}, that is, manual trades.

By 1915 there were 5 Government school in the NT and provision had been made for the
education of half-castes at a special school in Darwin and at the Public School in Alice
Springs. A kindergarten class had been established in Darwin and Chinese scholars
were separated from British children because parents felt that their children’s progress
was being hampered by children from non-English speaking backgrounds\textsuperscript{28}. There was
fine work being done by scholars in the industrial part of the curriculum and Higher
Education continuation classes had begun – attended mostly by cadets in Government
employ and some others. The average attendance was lower than previous years, but
was accounted for by an outbreak of dengue fever and the fact that the Chinese scholars
had their own special holidays\textsuperscript{29}.

It would be appropriate here perhaps, to explain the official pre-occupation with
attendance figures. Schools then and now are staffed on the number of pupils in
attendance.

\footnotesize
\begin{itemize}
\item \textsuperscript{22} Northern Territory Times and Gazette 11 December 1913
\item \textsuperscript{23} Northern Territory Times and Gazette 18 December 1913
\item \textsuperscript{24} 2010 Personal communication with Elisse Zarimis
\item \textsuperscript{25} 2004 Personal communication with Flo Pott’s grand-daughter
\item \textsuperscript{26} Administrator’s Report 1913
\item \textsuperscript{27} Ibid
\item \textsuperscript{28} Administrator’s Report 1915
\item \textsuperscript{29} Ibid
\end{itemize}
Meanwhile, children at the two and a half mile were conveyed home by an engine with a carriage attached, but as the Railways department needed the engine elsewhere, the service could not be regularly maintained. It was considered that the long walk home in the heat of the day was prejudicial to the health of the children, so a school was opened at Parap in 1917. It was erected on the Reserve between the Freezing Works and the Railway workshops. The Reserve was an area that today is bounded by Stokes Street, Parap Road, the Stuart Highway and Wilkinson Street. Mr King was the teacher and had 60 pupils enrolled.

The school hours were again modified. Commencing at 8.30am, children worked until 12.30pm. Upper scholars returned from 2 to 4pm on two afternoons per week, plus Saturday morning, the afternoon classes of senior pupils utilising the under area of the new building. Average attendance was 72.7 students per day, with about 25 being from a non-English speaking background (Chinese, Greek, Spanish and Russian). The Inspector reported that since the numbers had increased, the children had formed little coteries and almost invariably used their mother tongue in conversation with one another. This was especially noticeable with the Greek children.

There were 26 enrolled in higher education, but an average attendance of only 16. Arrangements had been completed with International Correspondence Schools, and mining metallurgy had been allotted as a subject for higher education in Darwin.

By 1920 the meatworks had closed forcing many families to leave. The number of Greek families diminished and those in attendance, through mixing more with English speaking children, improved their language skills which saw a corresponding improvement in those subjects which demanded a grasp of the English language. The continued industrial depression reflected in the number of children in attendance, and this necessitated a reduction of staff.

1921-1931

In May-June 1921, the Minister for Home and Territory, the Hon Alexander Poynton visited. In Darwin he was asked by residents to provide facilities for higher education in the Territory. He indicated that a High School would be established the following year.

So off to a flying start, the senior teacher Mr Victor Lampe, mindful of Inspector Rossiter’s visit some years earlier, formed a class in July 1921 to prepare pupils for the entrance exam to a high school which would be opened in January 1922. Included in that class was Jock Nelson, who later became the Territory’s first home-grown administrator, and Lilla Bell who was to become the first Territory-educated teacher to graduate and return to teach in the Territory. The High school was in full operation in January 1922 and a bazaar was inaugurated by staff and senior pupils to raise funds for school library, and 400 books were purchased.

Measles during 1922 compelled Health Dept to close Darwin and Parap schools for five weeks.

References:
30 Administrator’s Report 1917
31 ibid
32 ibid
33 Administrator’s Report 1920
34 Administrator’s Report 1921
35 Darwin High School Picture Archive
36 ibid
37 Administrator’s Report 1922
38 ibid
In 1923, Mr Lampe reported that a number of High School scholars had been leaving to take up positions, and the average attendance was not maintained. In order to keep the number up in the High School (it needed 25) he had been compelled to take the highest grade from the primary school in addition to high school pupils. Night classes continued 2 evenings per week. A visit from the Queensland Inspector in 1924 ensured that Territory education continued on Queensland lines.39

There was concern at the falling numbers at Darwin High School, and this was attributed to the preponderance of non British students. The Chinese outnumbered the British children by almost 2:1. Inspector Fox also found the disruptions caused by teachers going on leave had contributed to the general malaise that he observed. He called for better organisation and management of schools.40

By 1925, the numbers in attendance at the High School were so low – about 15 – that the classes were abandoned and on the advice of Inspector Fox, a scholarship tenable at an approved secondary school in Queensland was substituted. Six families were receiving education by correspondence, and Queensland teachers were brought in to replace teachers on leave.41

The first Government scholarship was awarded in 1926 the winner being Master L Lampe and Miss Lilla Bell gained the first success in Teacher's exams by a Darwin pupil teacher. Miss Bell was admitted as a pupil teacher, Second Class, Queensland status. Inspector Fox in his inspectoral report also mentioned that ‘the Chinese scholars were the most regular attenders, and they also every afternoon, attended their own school run by a Chinese teacher’. Inspector Fox went on to state that ‘the aims of the Chinese school were to foster a love of all that is good in the Chinese race and to give pupils such knowledge of the Chinese language as will enable them to use it intelligently in business and general correspondence conducted with the land of their ancestors’.42

In 1927 the Administrator reported that there was still difficulty with pupils of foreign extraction and that three candidates had sat the 1927 scholarship exam. The winner was ‘a boy of Chinese extraction’. There was much public debate and righteous indignation expressed, that this plum prize had been awarded to a ‘Celestial’.43

By 1928, it was reported that the Correspondence tuition papers would be distributed and collected by the Head Teacher at the Darwin school. This would save as much as six weeks in the collection and return of work.44 Meanwhile there was much agitation in the town about the mixing of children at school. Strong objections were raised by white parents to the mixing of various coloured children with the white. They wanted a separate school for whites, but their pleas appear to have fallen on deaf ears. Excellent reports on the scholarship holders at The Southport School in Queensland were received in regards to educational and sporting ability, and everyone basked in the reflected glory.45

1929 saw the Darwin and Parap schools closed for a week because of the death of a scholar from cerebro-spinal meningitis. The white population was feeling more secure as the percentage of British to foreign children has risen, and 5 children sat the scholarship exam. The winner was a girl who chose to attend Brisbane Girls Grammar School.46

39 Administrator’s Report 1924
40 ibid
41 Administrator’s Report 1925
42 Administrator’s Report 1926
43 Administrator’s Report 1927
44 Administrator’s Report 1928
45 Northern Territory Times and Gazette various through 1928
46 Administrator’s Report 1929
Meanwhile the 1926 winner had his scholarship extended, as he had passed the Junior Public Exam of Queensland and would sit his Senior Public Exam in December 1930\textsuperscript{47}.

In 1930 the schools were hit by measles, whooping cough and gastric influenza, and religious instruction was introduced, to be given by the Anglican and Methodist ministers\textsuperscript{48}.

Following the outbreaks of disease, the Northern Territory Times and Gazette reported a move to build a new school on the Esplanade, where there were healthy breezes. But the owners of residences already on the Esplanade objected, claiming that their properties would be devalued by the proximity of a school. The usual pre-occupation with scholars of foreign extraction continued on through the 1930s\textsuperscript{49}.

1931-1941

And in the 1932 Report, the Administrator noted that Armistice Day, Anzac Day and Empire Day were commemorated by the children, and that the Darwin branch of the RSL entertained the children with a picnic and that every child received a present\textsuperscript{50}. Inspector Moorhouse of the Queensland Education Department reported that the standard of education compared favourably with that seen in the best schools in other states\textsuperscript{51}.

By 1933 Mr Lampe as Supervisor, reported that since the inception of the scholarship in 1925 the attendance rate had increased 50\% and that serious consideration should be given to Inspector Fox's original suggestion that when the occasion warranted it, an increase in scholarships should be considered\textsuperscript{52}.

In 1935, six children sat the scholarship exam, and only .2\% separated 2\textsuperscript{nd} and 3\textsuperscript{rd} candidates\textsuperscript{53}.

By 1936, the Commonwealth through the Education Branch, was administering 8 schools with 535 pupils and 40 correspondence students. And again the residents began to agitate for the establishment of a High School. In this they were supported by the Darwin branch of the ALP\textsuperscript{54}, the Northern Territory Times and Gazette\textsuperscript{55}, Inspector Lampe and the Administrator\textsuperscript{56}.

In 1939, a budget line was set aside for the provision of facilities for secondary education, but with war clouds on the horizon, it was finally decided to increase the number of scholarships available from three to nine\textsuperscript{57}.

By 1940, the Inspector was calling for a 'uniform curriculum throughout the Commonwealth' because of the large number of pupils who were arriving in Darwin from every state in Australia. The main problem being that the South Australian primary curriculum was delivered over 6 years, whilst that of Queensland was delivered over 9 years. Archival files abound with letters of protest from parents whose 15 year old children had been placed in grade 6! \textsuperscript{58}

\textsuperscript{47} ibid
\textsuperscript{48} Administrator's Report 1930
\textsuperscript{49} Administrator's Reports 1930-1939
\textsuperscript{50} Administrator's Report 1932
\textsuperscript{51} ibid
\textsuperscript{52} Administrator's Report 1933
\textsuperscript{53} Administrator's Report 1935
\textsuperscript{54} Northern Territory Times and Gazette various through1936
\textsuperscript{55} ibid
\textsuperscript{56} Administrator's Report 1936
\textsuperscript{57} Administrator's Report 1939
\textsuperscript{58} F1 series, National Archives, Darwin
Most of those so affected, elected to have their children schooled by correspondence. 21 students were attached to the Darwin Correspondence School and 47 were instructed by correspondence from Brisbane and Adelaide.

With the Second World War now a reality, Mr Lampe was given leave of absence to take up duties as Chief Censor in Darwin, and Mr Tambling acted as Supervisor. As the war progressed, the staffing of schools became most difficult, and it was made more acute by the prolonged illness of several teachers.

1941-1951

On 12 December 1941, the War Cabinet decreed that women and children should be evacuated from Darwin. 1066 women and 969 children were removed from Darwin, the majority by sea, and all Darwin schools closed. By 30 January 1942, all Education Branch and school records had been transferred to Alice Springs. These records, including an Honour Board from the Darwin Public School, which contained the names of former Darwin school boys who had served in the Great War were placed in a storage in a warehouse. Sadly all were lost when the storage facility caught fire and burned to the ground. Although the Darwin Schools remained closed for the duration of the war, other schools in the Territory e.g. Katherine, Tennant Creek and Alice Springs remained open.

Meanwhile the Prime Minister, with perhaps an eye on the escalating War costs, had written to the Premier of South Australia in July 1944, suggesting that the Education Department of South Australia might take control of schools in the Northern Territory. Since 1929, South Australia had been making teachers available to the Commonwealth on loan, to service schools from Tennant Creek south, while a similar arrangement with Queensland had seen to the provision of teachers for the schools north of Tennant Creek.

The fundamental factors of the proposed arrangement were that the Commonwealth Government would provide schools and furniture, and the South Australian Education Department would provide teachers and the curriculum. Again there were special features of schools activities that attracted attention – the first being transport. It was considered unreasonable, that the climate of the Northern Territory being as it is, children should be expected to walk long distances in the heat. After lengthy discussions, it was resolved that the NT Administration would be responsible for getting children to school.

The next point to arise was the provision of radio sets, so that every school could have access to National Radio Broadcasts. Again, it fell to the Commonwealth to provide these. Then there was the provision of a Cinema projector, so that the children might have access to “talkies.”

And then there was the provision of adequate facilities for the ‘modern type of physical education’ which necessitated the school yards being bitumenised – again the Commonwealth picked up the tab! And finally there was the establishment and control of

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59 Administrator’s Report 1940
60 ibid
61 Administrator’s Report 1941
62 ibid
63 F1 1939/391 National Archives Darwin
64 Administrator’s Report 1947
65 ibid
School Committees and Mothers’ Clubs, with the Inspector stating that he had been greatly impressed by the intense interest which parents were taking in the schools\textsuperscript{66}.

The Darwin schools reopened in May 1946 in buildings that had suffered shrapnel damage and were riddled with bullet holes. The town was a mess with the detritus of war everywhere\textsuperscript{67}.

An Administration Officer’s wife, Mrs Mary Tanner whose medical studies at Melbourne University had been interrupted by the War, was seconded to ‘provide challenging and stimulating lessons for the ‘more able’ boys and girls. The ‘not-so-able’ students with teacher encouragement, spent many hours collecting scrap metal which was fashioned into garden furniture and ornaments for the school grounds\textsuperscript{68}\textsuperscript{69}.

This ‘intense interest’ that the Inspector noticed\textsuperscript{70}, became a ground swell of agitation in 1948 for the re-establishment of the High School, but South Australia resisted and gave only Higher Primary status to the Darwin School\textsuperscript{71}\textsuperscript{72}. This provided a curriculum up to Intermediate standard of the University of Adelaide, which meant that it accepted students up to and including Year 9 – which was exactly the situation from 1911 to 1945, when the Territory was under the Queensland jurisdiction. The locals were far from happy\textsuperscript{73}.

Other items to gain attention were the state of buildings, the provision of equipment, the provision of and accommodation for staff, scholarships and allowances, school committees, medical and dental services, the education of part-Aboriginal children, the provision of correspondence lessons, transport, school broadcasts, visual education and pre-school education\textsuperscript{74}.

In 1949, the Apprentices Ordinance was passed and the Apprentice Board became operative in January 1950, and evening classes for 34 New Australians were established at the Darwin Higher Primary School\textsuperscript{75}. In the immediate post-war period, governments were struggling to meet the demands placed upon them, and for the people of Darwin the most pressing was the provision of full secondary education facilities. Erina Tokmakoff, the daughter of Russian immigrants who had fled the Russian Revolution, won a scholarship that took her to Adelaide for her final years of secondary education, then on to Adelaide Teachers’ College. In 1956 Erina returned to Darwin as the first NT educated student to return as a teacher since Lilla Bell in 1926\textsuperscript{76}.

1951-1961

In 1953, in a concerted effort by parents, students and teachers, pupils sat the South Australian Leaving Examination, although the school was not officially teaching the course. The students all passed with flying colours – so much so, that John Withnall won the prestigious Tennyson Medal awarded to the top English student in South Australia, and Norm Chin was similarly placed in Woodwork. These outstanding results

\textsuperscript{66} ibid
\textsuperscript{67} 2006 Personal communication Bob Schulz
\textsuperscript{68} 2009 Personal communication Mary Tanner
\textsuperscript{69} Darwin High School Picture Archive
\textsuperscript{70} Administrator’s Report 1948
\textsuperscript{71} Administrator’s Report 1948
\textsuperscript{72} School Magazine, Darwin High School Archives
\textsuperscript{73} Northern Territory Times and Gazette various through 1950
\textsuperscript{74} Administrator’s Report 1949
\textsuperscript{75} Administrator’s Report 1950
\textsuperscript{76} 2001 Personal communication Erina Tokmakoff
brought about a reappraisal by the Education authorities, and Darwin Higher Primary School was to be officially re-designated Darwin High School in 1956\textsuperscript{77} 78.

Joyce Chin (nee Ah Toy) a third generation Territorian of Chinese descent became the first girl Head Prefect at the newly designated High School, and upon graduation, undertook Teacher Training in Adelaide. Joyce returned to the Territory teaching at Alice Springs in 1961 and was the first Home Science teacher to be appointed to Darwin High School in 1964\textsuperscript{79}.

The change in status brought about a renewed burst of energy and enthusiasm. A school uniform was devised – it included a straw boater. Gus Withnall won a competition to design a logo for the school\textsuperscript{80}, which still endures, an appropriate Latin motto Esse Quam Videri, was adopted and officially registered in Canberra\textsuperscript{81}, a school hymn was chosen\textsuperscript{82} and prefects were installed by the Administrator in Government House\textsuperscript{83}.

The High School quickly outgrew its premises in Cavenagh Street, and moved across Wood Street to occupy Frog Hollow. As the numbers exploded towards 1000, moves were made in 1958 to obtain new premises. Designs were drawn up in 1959 for Darwin Technical High School\textsuperscript{84} – no doubt a Commonwealth attempt to redress the skills shortage of the day.

The Bullocky Point site was chosen to compliment the proposed University at East Point and the Teaching Hospital at Myilly Point. The Commonwealth appeared to lavish vast sums of money on Education in the Territory, however the purse strings were carefully controlled by Canberra and many a battle ensued\textsuperscript{85}.

A wonderful new 3 storied building appeared on Bullocky Point, but its construction was not without bureaucratic interference. The contractors Maddalozzo Bros had used a new quick-setting cement. The building inspectors were not convinced that the building would carry the weight intended and demanded the structure be demolished and restarted. This would take the contract over time and over budget, so Maddalozzo Bros dumped 200 tons of wet sand on the top floor of A block to confirm its load carrying capacity\textsuperscript{86} 87.

The new building had the latest in teaching amenities and was trumpeted by the Commonwealth as the leader in its field. And in a remarkable feat of self promotion, the Department of Territories organised for The Australian News and Information Bureau distributed a series of photos to various media outlets and even post cards were printed, featuring the magnificent new edifice on Bullocky Point\textsuperscript{88}.

But there was one problem. No provision had been made for either fans or air-conditioning in the building. Parents complained, kids fainted, and public demonstrations took place. All to no avail – Treasury kept tight control of the purse strings\textsuperscript{89}.

\textsuperscript{77} Darwin High Primary School Magazine 1955
\textsuperscript{78} 2001 Personal communication John Withnall and Norm Chin
\textsuperscript{79} 2001 Personal communication Joyce Chin (nee Ah Toy)
\textsuperscript{80} Darwin High School Magazine 1956
\textsuperscript{81} ibid
\textsuperscript{82} 2001 Personal communication Myra Lillywhite former Senior Mistress DHS
\textsuperscript{83} Darwin High School Picture Archive
\textsuperscript{84} ibid
\textsuperscript{85} 2001 Personal communication Reg Marsh Acting Administrator NT
\textsuperscript{86} ibid
\textsuperscript{87} 2001 Personal communication Erica Wiltshire wife of former site foreman
\textsuperscript{88} Darwin High School Picture Archive
\textsuperscript{89} NTRS 2820, Northern Territory Archives Darwin
\textsuperscript{89} Northern Territory Times and Gazette 1963
Then one day in late November, the Minister responsible for the Territory the Hon Paul Hasluck made a refuelling stop in Darwin on his way to London. Mrs Nan Giese who was active in the High School Council at the time, rode her bicycle from her home on Myilly Point to the old Darwin Airport and walked into the Lounge where Mr Hasluck was sitting under a fan in his shirt sleeves, enjoying a cool drink. Mrs Giese immediately turned off the fan. Mr Hasluck’s staff were stunned. Mrs Giese then proceeded to address Mr Hasluck, telling him that Darwin students sweated through 6 hours of instruction daily, without the benefit of any cooling devices what-so-ever. Mr Hasluck issued an interim order on the spot, for fans to be installed in ‘A’ block. Two years later when ‘B’ block was being built and air-conditioning was being installed, air-conditioning was also installed in ‘A’ block.

1961-1978

The sixties was a period of intense activity in the field of education in the Territory. New buildings sprouted up, there was a shortage of teachers, meetings were held at the new Darwin High School to formulate plans for the introduction of Tertiary education, Aboriginal education was enhanced with the establishment of Carpentaria College a boarding facility in Nightcliff, Kormilda College in Berrimah and Dhupuma College in Nhulunbuy. Today’s generation of Aboriginal leaders were being educated in a western system. New high schools in the suburbs of Nightcliff and Casuarina were built and quickly reached capacity.

These monumental steps commenced during the stewardship of Paul Hasluck (1951-1963) and continued under Charles Barnes (1963-1968).

During the period 1911-1978, the Territory came under the control of no fewer than 37 Ministers and 9 Departments. That anything was achieved is indeed remarkable. The improvements reflect the energy and interest of the Minister at the time. In 1975, the then Minister for North Australia, the Hon. Paul Keating was quoted as saying that “the best way to see Darwin is from 30,000 feet on your way to Paris”! But to be fair to Paul Keating, Territorians were in 1975 moving towards self government and his dis-interest can be likened to that of the South Australian Government in the period leading up to the Commonwealth acquisition of the Territory in 1911.

Looking back, it would seem that enthusiasm for education has waxed and waned during the period under review. As political interest waned, so the population became more actively involved, thus applying pressure for political action.

A wave of excitement swept through the populace in 1911 as wonderful things were proposed. But this quickly evaporated as the reality of the Great Depression settled on initially the Northern Territory, and then the rest of Australia, as people moved seeking employment. There was a general slide into apathy, and as someone had to be blamed for this, so began a fixation with non-English speakers. There was very little consideration given to Aboriginal education and the people of the towns were plagued by health problems.

Another flicker of interest occurred in the late 1930s, but was quickly snuffed out by the advent of World War II. Education again benefitted from the post war boom, both in relation to the provision of new amenities and the increased numbers of students seeking higher education. Commonwealth control of Territory Education resulted in

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90 2001 Personal communication Mrs Nan Giese
91 2001 Personal communication Reg Marsh Acting Administrator NT
92 Administrator’s Reports 1964-1978
93 1975, when Minister for North Australia
regular health checks, the enforcement of the Education Act, the introduction of a uniform curriculum, an extensive building program, the provision of education for Aboriginal people, free transport for students, the establishment of kindergartens, the introduction of secondary education, the introduction of trade training and apprentice education and the beginnings of tertiary education, all of which has been achieved under 37 Ministers and 9 departments.

Problems which arose were dealt with by creative solutions. Mr Lampe, in 1921 ensured that his pupils would pass the qualifying examination for entry into secondary schooling. In the 1950s the claim for secondary schooling was promoted in a most ingenious manner; likewise the building of the new high school in 1962 which had to come in on time and on budget. The provision of air-conditioning to the new high school was also accomplished in a manner which did not follow the accepted protocols of the day.

Despite best intentions of officialdom to mould the Territory to southern ways, Territory ingenuity and direct action prevailed.

Yet, despite the hiccups, I believe the Commonwealth did deliver a brave new world.

Disclaimer:

The views expressed in this paper are those of the author, and do not in any way reflect the views of the Darwin High School community or the Northern Territory Department of Education and Training.
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