ABSTRACT. Over a number of years there has been a public debate in Australia over the place of legal rights in the struggle for Indigenous economic, social and cultural gains. Most Indigenous leaders have called for a rights agenda as a solution to Indigenous disadvantage. However, one leader has been a vocal critic of this approach. This paper considers the possibility that although the debates may fundamentally represent different views as to how best to improve conditions for Indigenous Nations, they also represent differing approaches to harnessing the support of mainstream Australia in a politically conservative environment. In coming to this position, I am reminded of the arguments put by proponents of the Critical Legal Studies movement in US, that rights are merely abstractions, and the counter by Patricia Williams, a Critical Race Theorist, that as a result, they can be framed in a variety of ways and can take the form required by the community in which they are found. In Australia, minority groups must find an indexically-open vehicle, fitting to the Australian rhetorical structure(s), to represent their struggle for economic, social and cultural rights.

1. Introduction

Practical blueprint fails blacks. Aboriginal rights must stay on the agenda.
Aden Ridgeway

Over a number of years there has been a public debate in Australia over the place of legal rights in the struggle for Indigenous economic, social and cultural gains. The debate is represented by the dialogue between two Australian Indigenous leaders, Aden Ridgeway, then Senator, representing the Australian Democrats, and Noel Pearson, activist, lawyer, and social commentator from the Cape York Land Council.

Pearson has asserted that Indigenous Nations should abandon the legal and political rights agenda, and their efforts be more directed instead towards improving their living standards. According
to Pearson, the 1967 constitutional referendum and its consequence of citizenship and equal rights for Australian Indigenous people, led indirectly to welfare dependency. A continued focus on rights, he argues, would deny Indigenous Nations their place in the economic market place. Ridgeway’s counter position is that economic goals must be supported by a rights agenda, the 1967 referendum symbolising a first step in its pursuit.

Australia does not have a bill of rights and few rights have been found to attach to its Constitution. Further, the Commonwealth Government’s unwillingness to embrace the idea of enshrined legal rights is indicated by its critical response to the Australian Capital Territory’s recent adoption of a Bill of Rights. As a result, rights in Australia are a political phenomenon, not a legal category as they are, say, in the United States. There is no pre-given form or content to rights. Hence, the discourse on rights may be represented in various ways and moulded to capture public intention. In fact, in the absence of their legal protection, political persuasion is essentially the only way of guaranteeing the cultural and social rights of Indigenous Nations.

Given this context, the public debates between Indigenous leaders take on a different hue, than those in legal systems in which rights are protected. In this paper, I provide an overview of Indigenous viewpoints of the last ten years on the issue of rights in light of Government policy. I argue that, although the debates may represent fundamentally different views as to how best to improve conditions for Indigenous Nations, they also represent differing approaches to harnessing the support of mainstream Australia in a politically conservative environment. In coming to this position, I am reminded of the arguments put by proponents of the Critical Legal Studies movement that rights are merely abstractions, and the counter by Patricia Williams, a Critical Race Theorist, that as a result, they can be framed in a variety of ways and can take the form required by the community in which they are found.

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3 Supra n.2.
2. BACKGROUND TO THE DEBATE: FROM RECONCILIATION TO PRACTICAL RECONCILIATION

Australia’s poor treatment of its Indigenous people is well documented. The plight of Indigenous people is represented by the following data:6

- Life expectancy for Indigenous women is 19 years less than for non-Indigenous women, with a difference of 21 years for men.
- The rate of Indigenous infant mortality is 2.5 times that of the total population.
- Indigenous children are 32% less likely to complete year 12, the final year of secondary schooling in Australia, than non-Indigenous children.
- Indigenous people are 15 times more likely to be incarcerated than non-Indigenous people.
- The rate of unemployment for Indigenous peoples is 2.5 times greater than the national average.

The degree of Indigenous disadvantage is nationally recognised. More contentious is the issue of its causes and the methods of addressing it.

The concept of “reconciliation” was first formally adopted in 1991 with the passing of the Council for Aboriginal Reconciliation Act 1991 (Cth) by the Australian Parliament.7 It was preceded by the famous “Redfern Speech” by then Prime Minister Paul Keating in which he signalled a commitment to forming a treaty between Indigenous and non-Indigenous Australians. In introducing the Council for Aboriginal Reconciliation Bill 1991 into Parliament, Senator Robert Tickner explained to the House that the process of reconciliation was to signal the beginning of a decade of reform and social justice for Aboriginal and Torres Strait Islander people and building bridges of understanding between Indigenous and non-Indigenous Australians.8

Hence, its intention was not only to address Indigenous disadvantage through targeted assistance, but to achieve true social justice and unity by virtue of a recognition of Indigenous cultures.9

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7 Supra n.6, at 3.
9 Tickner, 4498, referred to in Australia, Senate, Supra n.6 at 4.
In 2000, the Council for Aboriginal Reconciliation submitted its Final Report. It recommended, *inter alia*, that the Australian Parliament “put in place a process which will unite all Australians by way of an agreement, or treaty, through which unresolved issues of reconciliation can be resolved”. Behrendt notes this as the “centrepiece of a rights agenda”.

Upon election in 1996, the Prime Minister of Australia, John Howard, offered an alternative approach to a rights-based model of reconciliation, focusing on “practical reconciliation”. This has three objectives: firstly, to improve the living standards of Indigenous people, as a step to providing equal opportunity for all Australians; secondly, to acknowledge Australia’s inter-related histories, without directing blame or guilt for past wrongs; thirdly, to achieve mutual agreement on the need to work together, acknowledging difference in a manner that does not present an obstacle to a shared future. The concept targets socio-economic issues such as housing, education, health and employment, through policy initiatives. According to the Commonwealth Government, these are “basic citizenship rights” and achieving them is a “litmus test of reconciliation”.

2.1. Indigenous responses to practical reconciliation

The Government’s response spawned a debate among Indigenous leaders on the best approach to addressing Indigenous disadvantage. Most public of these debates, at the time, was that between Ridgeway and Pearson, although the views expressed by Ridgeway were shared by many other Indigenous leaders.

According to Pearson, the past 30 years of “passive welfare dependency” that arose following the granting of citizenship to Indigenous people has created a “false economy”, which is at odds both with self subsistence, and with independent economic and

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11. Supra n.5, at 7.


governance structures. Pearson equates a rights agenda with dependency as much as with empowerment. As he says: “Australians do not have an inalienable right to dependency, they have an inalienable right to a fair place in the real economy”. Pearson argues that the discussion of rights, as advocated by the political left should be supplemented with the political right’s notion of responsibilities. For rights discourse to achieve anything for Indigenous Nations it needs to be matched by a discourse on responsibilities and duties, overcoming patterns of dependency:

[The Coalition [the government, formed by the Liberal Party and the National Party, constituting the political right of Australian politics] will better understand the problems of responsibility but will be antipathetic and wrong in relation to the rights of Aboriginal people.]

In short, the right to equality and therefore to equal working conditions has denied Aboriginal people a place in the economy. This, coupled with welfare assistance, has entrenched welfare dependency. The proposed solution is to couple the right to equality with responsibility, rather than focussing on rights gains alone.

This is a matching of rights talk of the political left with the mutual responsibility talk of the political right. Under these circumstances, Indigenous Nations would, according to Pearson, achieve a place in the economy. Pearson suggests that in order to counter the effects of the passivity of welfare dependency, new formal and informal self-determining structures of governance need to be developed, and a re-arrangement of current institutions which disburse “welfare resources”, should be undertaken at Commonwealth and State levels.

Ridgeway countered that it would be impossible to replace welfare dependency with economic opportunity, and not place any reliance upon rights. To do so would require ongoing generations of wealth, which do not exist in the first instance. Resources to enable economic opportunity must come either through welfare or

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16 Supra n.15, at 8.


alternative government sources.\textsuperscript{19} According to Ridgeway, Pearson’s agenda is too simplistic a formula, disregarding the social and the political imperatives that must accompany Indigenous economic empowerment and self-sufficiency:

[R]earranging the economies of communities will not necessarily resolve social problems unless Australians are prepared to reconcile our cultural and social prerequisites with the imperatives of wealth creation. This means that rights must be on the agenda. Reconciliation, if nothing else, has highlighted an existing tension between Australians being prepared to countenance legal equality but not necessarily countenancing a rights agenda.\textsuperscript{20}

Ridgeway concludes that economic goals alone cannot define the relationship between Indigenous Nations and non-Indigenous Australians but must be supplemented by a rights agenda.\textsuperscript{21} He suggests that rather than marking the beginning of economic dependency, the 1967 Referendum symbolised a first step in the attainment of rights.\textsuperscript{22} The failure was at the next stage – in not defining and expanding those rights beyond simple equality. This, however, does not mean that rights discourse is not valuable. It is one of the paths to the attainment of social, cultural and material outcomes for Indigenous Nations.

Ridgeway’s view represents the dominant position of Indigenous leaders.\textsuperscript{23} Professor Larissa Behrendt argues that:

“Practical reconciliation” fails to understand that the protection of rights includes the ability to exercise economic and property rights. Recognition and protection of these would put land under people’s feet, allow access to natural and other economic resources and work towards ensuring that Indigenous communities were economically self-sufficient. It can be argued that without the protection of these rights we will be dependent on welfare and on the benevolence of the legislature…. “[P]ractical reconciliation” is not going to change systemic welfare dependency or any other structural issue.\textsuperscript{24}

Lowitja O’Donoghue, former chairwoman of the Aboriginal and Torres Strait Islander Commission, has characterised “practical rec-

\textsuperscript{19} Supra n.2.
\textsuperscript{20} Supra n.2.
\textsuperscript{21} Supra n.2.
\textsuperscript{22} In fact, Ridgeway counters the argument of a causal link between equal citizenship rights and “welfare dependency” by showing how the total Commonwealh budget for Indigenous Nations between 1967 and 1987 was a mere $3 billion, compared to the 2002/2003 allocation of $2.5 billion. A. Ridgeway, Reconciliation: History Shapes the Future Paper presented to Edith Cowan University, 9 July 2002, 8.
\textsuperscript{23} The policy has also attracted criticism from non-Indigenous commentators, organisations and parliamentary committees. See for example, Australia. Senate 2003 (above n.6) and the website of Australians for Native Title and Reconciliation (ANTaR) (www.antar.org.au).
...onciliation” as “a welfare model, a Band-Aid model, not one seated in fundamental recognition of the rights and entitlements of Australia’s first peoples”.  

25 Patrick Dodson, one time Aboriginal and Torres Strait Islander Social Justice Commissioner, argues that practical reconciliation is merely the “dressing up” of ordinary citizens rights and does not address the complexity of Indigenous affairs.  

26 In 2000, he claimed that the Government was attempting to “drive a wedge between the concepts of rights and welfare, and between those who advocate a rights agenda and those seeking relief from the appalling poverty”.  

27 The view that “practical reconciliation” has not and will not address Indigenous disadvantage was legitimised by research undertaken in 2003 by the Centre for Aboriginal Economic Policy Research at the Australian National University. The researchers analysed the effect of government policy from 1991 to 1996, when policy focussed on treaty building (reconciliation), and from 1996 to 2001 when the concept of practical reconciliation was adopted. They find that, “[I]n terms of reconciliation, if this is interpreted in relative and ‘practical’ and socio-economic terms, there is less reconciliation in 2001 than in 1996”.  

28 They note the limits to the policy approach of practical reconciliation which, stands in opposition to a rights-based approach, and in particular to recognition of rights that may arise from the unique position of Indigenous peoples as the original owners and occupiers of the land and users of its resources.  

2.2. The long walk: recent developments  

2004  

We want to re-open the dialogue with the Prime Minister. The mutual obligation stuff has a lot of resonance within Aboriginal culture.... I am sure we can work with John Howard.  

Patrick Dodson  


29 Supra n.28, at 14.  

On 3 December, Australian Rules football legend, Michael Long, an Indigenous man, ended his walk from Melbourne to Parliament House in Canberra, a trip of hundreds of kilometres, to meet Prime Minister Howard. His hope, in starting the walk, was to reopen the dialogue between Indigenous people and the Government and to encourage the Prime Minister to visit remote communities to witness the disadvantage, first hand. Attending the historic meeting were Indigenous leaders Patrick Dodson and Noel Pearson, representing the two apparently differing views; that is “practical reconciliation” versus the rights agenda. Although the Prime Minister made no substantive promise, it is reported that he explained his mutual obligation policy and the meeting ended with a handshake and a commitment to further discussion. As Long commented “[O]bviously the walk has ended, but the journey of the nation has begun”.  

Before this historic handshake, Indigenous leaders had, themselves, held a meeting in Port Douglas in which there was a coming together around the idea of “mutual obligation”. Patrick Dodson publicly announced that this meeting gave him an opportunity to

“get to the depths of what Noel [Pearson] has been talking about…. Collectively, we have the foundation now for a serious search for practical solutions”.

Did this coming together between Pearson and his opponents mark a relinquishment by Indigenous leaders of the rights agenda, in favour of the Government’s limited view of reconciliation? While there may have been some concession to the Prime Minister’s hard line, I argue that, in fact, this united voice represents a change in rhetoric, with an adoption of signifiers which can be shared across the political spectrum. Further, I suggest that, although there were no doubt differences in the political attitudes of Pearson and Ridgeway, there was evidence of a search for a persuasive, broadly applicable rhetoric in their earlier debates.

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31 Supra n.30, at 1.
32 Supra n.30, at 1.
33 Supra n.30, at 1.
3. Signifying Rights in Australian Contexts

In a well-known criticism of rights discourse in the United States, proponents of the Critical Legal Studies movement criticised the concept of rights because, in their view, they are fundamentally unstable, indeterminate and abstract.\textsuperscript{34} Patricia Williams countered the criticism, claiming that the life breathed into rights by minority groups has given a sense of definition, “the power of that familiar vision”.\textsuperscript{35} For minorities they have obtained concrete characteristics and this alone is a reason for continuing in the struggle for rights: “blacks believed in them [rights] so much and so hard that we gave them life where there was none before”.\textsuperscript{36} Therefore, while they may be merely abstractions, minority groups have breathed life into them, achieving an improvement in material circumstances because of them. Essentially, rights are signs which are subject to the system of rhetoric in which they are located.\textsuperscript{37}

The system of rhetoric constrains the meaning associated with signs. According to Malloy, citing Eco, interpretation is in part limited by the conventions of the community in which they sit.\textsuperscript{38} Patterson locates meaning in the use of signs, alerting to an intersubjectivity of meaning-making based on regular use of the sign rather than of its interpretation.\textsuperscript{39} This suggests that, firstly, a community, however that community is defined and constituted, has its own system of rhetoric and chooses and constructs signs according to that system. Secondly, there is a reflexivity between sign and context. The sign will be defined according to that community’s rhetorical structures, but the sign will also have a role in defining those structures. Malloy likens the connection to that of the age-old chicken and egg question:

[One might understand this semiotic approach as not so much concerned with determining whether the chicken or the egg came first but rather with investigating the relationship between chickens and eggs in an ongoing process of dynamic change.\textsuperscript{40}]

\textsuperscript{35} P. Williams, “Alchemical Notes: Reconstructing Ideas From Deconstructing Rights” \textit{Harvard Civil Rights CLLR} 22 (1987), 401, 430.
\textsuperscript{36} Supra n.35, at 430.
\textsuperscript{37} Supra n.35, at 423.
\textsuperscript{38} R.P. Malloy, \textit{Law and Market Economy: Reinterpreting the values of law and economics} (Cambridge: Cambridge University Press, 2000), 34.
\textsuperscript{40} Supra n.38, at 35.
Hence, rights can and do come to mean quite different things within differing signifiatory systems. Similarly, any sign can be used to signify rights or even to achieve them. In turn, any sign can influence the system or systems of which they form a part. This is apparent in the discussion of rights by and for Indigenous Nations and of a change in the rhetoric used by Indigenous leaders, corresponding to the events discussed in the previous section.

3.1. The sign (rights) in Australian rhetorical system(s)

Williams’ claim that signs are subject to the system of rhetoric in which they are positioned is, I argue, the crux of the Ridgeway (and others) and Pearson dialogue. Rather than a discussion about rights per se, the debate is best understood as an issue of how best to appeal to dominant systems of rhetoric in order to gain political support for Indigenous rights. Kainthaje notes, in an article on implied constitutional rights in Australia, a distinction in the study of rhetoric between the study of persuasion, and the study of “tropes or figural language”. Quoting Nietzsche, Kainthaje argues that rhetoric is more than a means of persuasion. It is a device for constructing truth:

What then is truth? A mobile army of metaphors, metonyms, and anthropomorphisms – in short, a sum of human relations, which have been enhanced, transposed, and embellished poetically and rhetorically, and which after long use seem firm, canonical and obligatory to a people: truths are illusions about which one has forgotten that this is what they are; metaphors which are worn out and without sensuous power; coins which have lost their pictures and now matter only as metals, no longer as coins.

And so it is that Indigenous leaders use the figural language of Australian society in asserting their claims. The struggle is to find a language for persuading mainstream Australia on the best strategy to address Indigenous disadvantage. The task requires a judgement of the signs of truth of mainstream Australia.

I do not mean to suggest that the public debates are merely a concerted and cynical attempt to win over the Australian public. They reflect real struggles by Indigenous and non-Indigenous people to find ways of addressing the material and social disadvantage

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43 Nietzsche, in Kainthaje supra n.41 at 23.
of Indigenous Nations and to ensure the protection of their cultural heritage.

The public statements by Indigenous leaders suggest two distinct movements. The first is an appeal to the concept of “fair go”, a slogan apparently embedded deeply in the national psyche. More recently, Indigenous leaders have adopted the rhetoric advocated by Pearson and accepted by the Prime Minister, namely that of “mutual obligation”. In either case, the point is, the need to obtain mainstream support for Indigenous issues through the use of language.

A particular approach for achieving mainstream support is explained by Ritchie Ah Mat, as Executive Director of the Cape York Land Council (Pearson’s community), in his explanation of a “90% counter clockwise strategist”.

The comment that follows is part of an approach for obtaining Constitutional reform encompassing a treaty between Indigenous Nations and non-Indigenous Australians. As Ah Mat argues, “we have to get real. If we talk treaty, we need to talk about how we’re going to get 80–90% of the country to back us in a Referendum. Otherwise we are just kidding ourselves”.

The rationale for 90% support has its roots in the history of Constitutional reform, in particular that of 1967 in which non-Indigenous Australians supported an amendment which permitted Indigenous Citizenship. He says that:

1. The ‘67 Referendum was passed by 90 something [percent] of the Australian electorate. We are constantly told that the Australian Constitution is one of the hardest constitutions in the world to change, because you need “a majority of voters in a majority of the states”.
2. To get 80–90% of the country to support a Referendum, you need bipartisan political support. And you need support from the States and Territories as well, so that they’re not running a “NO” case against you.
3. In order to get bipartisan support, you will need a conservative government to propose the amendment and you need Labor [the more left of the two dominant political parties] to offer bipartisan support. It is unlikely that you will get bipartisan support the other way around.
4. To get 80–90% of the country you need to convince rural, conservative and regional Australia of the need for change. In other words you need to convince those people who usually vote for the National Party [a Conservative, rural based party in coalition with the Liberal Party of Australia].

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45 Supra n.44, at 9.
Those who think that the Treaty is somehow a “radical” cause or a “radical” option, need to think again. If you want a treaty to turn into reality you need to have a strategy of convincing conservative and regional Australia in favour of your cause.\footnote{Supra n.44, at 7–9.}

So how can Indigenous leaders appeal to 90% of the population? Speeches made by Pearson and Ridgeway indicate some emphasis on traditional Australian mythologies: those of egalitarianism and anti-social-stratification. To be Australian is to be “ordinary” and to have a belief in equality or “fair go”, so the myth goes.\footnote{D. Horne, Ideas for a Nation (Sydney: Pan Books, 1989), 184.} Horne, in a seminal text of Australian national identity, notes that the myth of equality is represented by the cult of “mateship”, arguing that this was a “fraternalism” which excluded women and Indigenous people.\footnote{J. Fiske, B. Hodge and G. Turner, Myths of Oz: Reading Australian Popular Culture (Sydney: Allen & Unwin, 1987), 31.} The analysis by Fiske et al. of Australian popular culture similarly refers to the “egalitarian public”,\footnote{Supra n.49, at 31.} and the repression of “hierarchical class distinctions”.\footnote{Supra n.49, at 32.} To seek to be different is to act in a fashion that is contrary to the “egalitarian ethic” and can be interpreted as “perverse, snobbish or unAustralian”.\footnote{Supra n.49, at 11.} The ideal Australia is one which is “classless, matey, basic, natural” – ordinary and committed to a “fair go” for all. Like Horne, Fiske et al. note that women and Aboriginal people are excluded from the “bond of mateship”, at least that which lives in the Australian “pub”.\footnote{Mateship Interview, Australian Broadcasting Commission: Radio National, 24 April 1999. [Accessed at http://www.abc.net.au/rn/arts/ling/stories/s25262.htm.]} The persistence of the mateship myth and the claims of exclusion that accompany it is illustrated by the debates surrounding the Prime Minister’s insistence that the concept be included in the preamble to the Australian Constitution should it have been amended to accommodate a republican model. In a radio interview, Howard defended the use of the term:

> Whatever the origins of the word may be, it has become [sic] to occupy I believe, a hallowed place in the Australian lexicon, it really has. And it not only talks of the bonds between men, but it also talks of the bonds between men and women, women and women of people [sic], it talks of the spirit of helping people in adversity. We express mateship when we help people in floods, we express mateship when we help people in fires.\footnote{Mateship Interview, Australian Broadcasting Commission: Radio National, 24 April 1999. [Accessed at http://www.abc.net.au/rn/arts/ling/stories/s25262.htm.]}
Notwithstanding the criticism that Aboriginal people have been excluded from the myths of the fair go and of mateship, Ridgeway asserts the rhetoric to appeal to mainstream Australia’s sense of justice:

[I]t is primarily because of the Mabo decision that Australians have begun to take a much more honest look at the past, and have started to realise that we have a black history that sits uncomfortably with the national ethos of a “fair go” for all.\(^{55}\)

Ridgeway also appeals to the cult of ordinariness and anti-stratification when he speaks of the need for “Ordinary Australians – black and white” to “grapple with native title issues in recent times”.\(^{56}\) Pearson speaks in similarly mythical terms:

I want social order so that Indigenous people and ordinary Australians can organise themselves to defend land rights and the welfare state, I do not want progressivist confusion that compounds the disorganisation of the already powerless.\(^{57}\)

Whereas the concept of “ordinary Australians” is inclusive for Ridgeway, Pearson pits the ordinary Australian alongside Indigenous Nations, against the political left. This is fitting with Pearson’s neo-liberalism, embracing entrepreneurship and reward for effort. And perhaps this is the new Australia – that a “fair go” means ensuring a level playing field (equality) to enable individuals to succeed. While those in the US may speak of their “rights” Australians speak of the “ordinary Australian” and of having a “fair go”, of egalitarianism, classlessness (in the sense of opportunity rather than wealth) and mateship. The struggle for Indigenous leaders is to have their people included in the mythology, to have mateship expressed (using Howard’s explanation) in acts of reconciliation. The problem of course, is that the need to use the language of mainstream Australia, rather than the rights language around which Indigenous people have successfully mobilised in the past, is a move away from the ideal of reconciliation which aimed for a meeting of peoples and the rhetorical structures of their communities.

The discussion thus far suggests a singular Australian mythology when there is, of course, contestation over cultural Australian iconoclasm. As suggested already, the Prime Minister’s proposal that notions of mateship be included in the Australian

\(^{55}\) Supra Note 22 at 4. In Mabo the High Court rejected the legal fiction that Australia was terra nullius at the time of colonisation and recognised native title as part of Australian property law: Mabo v Queensland (No 2) 175 CLR 1.

\(^{56}\) Supra n.22, at 5.

\(^{57}\) Supra n.17, at 16, emphasis added.
Constitution’s preamble were criticised in the lead up to the referendum to establish an Australian republic. The connotations of white masculinity, the argument goes, rendered invisible ethnic, cultural and gender difference. Nevertheless, at a surface level, at least, the mythology of mateship, fair go and ordinary Australianism resonates with mainstream Australia, regularly being drawn on in politics by those hoping to appeal to some semblance of dominant Australian culture or by those seeking justice.

However, this approach has failed to give rise to meaningful change. Arguably, Indigenous leaders have been unsuccessful in adapting an Australian mythology which historically has excluded Indigenous people, into a fully inclusive one. It follows, then, that there was a change in approach in December 2004.

3.2. From fair go to mutual obligation

While referring to traditional Australian mythology, Pearson also retained a commitment to the idea of “mutual obligation”, explained above. This complemented the strategy outlined by Ah Mat. Pearson taps into the Coalition’s ideas of “mutual obligation” as the basis of the Australian welfare system when he says:

I marvel that neither side of this indulgent political divide in Australian politics can see that what is needed is for the rights favoured by the ALP [the Australian Labor Party] to be added to the responsibilities that are understood by the Coalition.

It would appear that although rights have been a sign around which Indigenous Nations could mobilise in their struggle for an equal place in Australian society, Pearson does not see this as a successful strategy for attracting broad-based support from non-Indigenous Australians, even when coupled with Australian mythology of the “fair go”.

Pearson links rights to the correlative duty of responsibility and obligation, a relationship which appeals to the Australian myth of

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58 I have already spoken of the battle for the position of political “underdog” in the 2004 election campaign. Similarly, barely a day went by without a political campaigner arguing that their policies represent a “fair go” for “ordinary Australians”. In particular, one candidate for the Senate ran under the slogan “Give the girl a fair go”. This was Pauline Hanson, the former leader of One Nation, a party critical of migration and of targeted assistance for Aboriginal people.

59 Jimmy Krakouer, an Aboriginal Australian Rules footballer, upon his release from prison for criminal convictions publicly stated: “Australia’s meant to be (the country of) the fair go. I deserve, I think everyone deserves, another chance”: “Regretful Krakouer Wants to Start Over” The Australian 27 September 2004, 2.

60 Supra n.17 at 1.
the “little Aussie battler” who will “have a go” if “given the chance”. This is an extension of the “fair go” myth. And the strategy has worked, with the Prime Minister, John Howard, making a public commitment to the concept of “mutual obligation”, not just in terms of Indigenous policy but also Social Security policy. Ridgeway criticises the stance, attacking the “language of neo-liberalism” and arguing that its advocates “assume that all Australians have the same life opportunities — that it is all a question of individual motivation and choice”. And while I note and agree with his criticism, arguably, Pearson is, in fact, appealing to this cult of the individual and to liberal marketplace ideals in order to obtain the support of middle Australia and the representative right. This is not, however, a rejection of rights as a whole, as indicated by his argument that “Australians (Indigenous and non-Indigenous) do not have an inalienable right to dependency, they have an inalienable right to a fair place in the real economy”. Yet his characterisation of rights draws from his neo-liberal commitment to economic self-determination, a viewpoint that is appealing to the political right and to mainstream Australia. As Pearson noted in the 2003 Annual Leadership Lecture:

[S]ince we have broken the automatic connection between activism in Indigenous affairs and conventional left liberal thinking, we have created a situation in which it is easier to discuss Indigenous peoples’ rights and interests with conservative people and the political right.

This differs from the rhetorical system of Ridgeway’s political supporters. Foremost for Ridgeway, and others within his figural world, is a commitment to political self-determination. This is arguably the language of the politically left side of mainstream Australian (to whom Pearson refers, somewhat disdainfully, as the ’progressivists’). It is also the view, by and large, of Indigenous leaders, as noted above.

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61 Supra n.22, at 6
62 Supra n.15, at 11
64 Supra n.17 at 12. Pearson outlines his political positioning in this paper, noting his commitments to values normally attributed to the left, such as a commitment to the welfare state or organised labour, as well as those often attributed to the right, such as social order. It seems that Pearson does not want to be placed into a political pigeon hole.
65 See also activist and writer, Oodgeroo, “Aboriginal Charter of Rights” in Reconciliation: Essays on Reconciliation in Australia, ed., M. Grattan (Victoria: Black Inc (Bookman Press), 2000) 1–2; and one time Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson, Aboriginal and Torres Strait Islander People and Human Rights Paper delivered to Wollongong University, 7 September 1993.
The Port Douglas meeting of Indigenous leaders presumably indicated a recognition that past strategies were not working. In interviews with the national press, Dodson and Pearson said that they wanted to redefine relationships between the Prime Minister and Indigenous Australians. Indigenous leaders united under the single slogan of “mutual recognition”. Dodson and Pearson claim the concept as one familiar to Indigenous culture:

The mutual obligation stuff has a lot of resonance within Aboriginal culture and within Aboriginal notions of kinship. This concept has a grounding within our culture and society.

This does not mean the end to the concept of rights. Instead, the debate has moved to a distinction between symbolic (legal and political rights) versus practical (socio-economic) issues, with the qualification that the two cannot be separated. As Behrendt warns, policy will only achieve long term improvement if it works towards addressing systemic change; similarly, a rights agenda is only effective if their achievement includes appropriate policy. This merging of the two, which was at the core of the original conception of reconciliation has now, in some quarters, become known as “true reconciliation”, set against the idea of “practical reconciliation”.

But I digress: the point is that rights in the Australian context are being characterised as the symbolic edge, rather than the core, of reconciliation. I do not think that this is a rejection of rights, merely a reconfiguring of the signifier, so that rights, which are not central in the Australian context, are an extension of a more widely appealing rhetoric. Minority groups in the US can only “breathe life” into rights because rights exist in the first place, as an abstract, indexically-open concept. In Australia, however, there is nothing to breathe life into – minority groups actually have to create a body in the first place.

It follows, then, that because rights-talk in Australia is not limited by legal proscriptions as to how rights are to be constituted,

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66 In Kelly supra n.31, at 1.
67 Dodson in supra n.31 at 1. Pearson agrees at 10.
69 Supra n.28, at 16.
Australian advocates are able to reconceptualise them, and the path to their attainment, in a manner that can have political appeal. This may mean working through a rights agenda in order to obtain substantive, material outcomes; or it could mean addressing material and social disadvantage first, with the qualification that true reconciliation requires a meeting of Indigenous and non-Indigenous cultures.

As Pearson commented in interviews to the national newspaper following the Port Douglas meeting:

I've been running on the responsibilities agenda since the 1998 election [Prime Minister Howards’ second term] because I believed the only way to get things back on track was to put a lot of weight on responsibility, so I decided to tack hard to the right after 1998. The point is that a lot of the rights we seek cannot be secured unless we also accept the responsibilities.  

4. Conclusion

I have argued that the arguments by Pearson, against rights, and by Ridgeway and others, for rights, should not be interpreted as a debate over the need for economic, political, cultural and material gains for Indigenous Nations. Rather, amongst other things, they reflect different approaches for appealing to the mainstream Australian mythologies of mateship and of giving fellow Australians a “fair go”, however these may translate within individual interpretative communities.

Although there are many different Australian communities, there is a broader community marked as “Australian” by virtue of particular mythologies of Australianism; those of egalitarianism and anti-social-stratification. To be Australian is to be “ordinary” and to have a belief in equality and of ensuring people have a “fair go”, or so the myth goes. An appeal to these concepts is apparent in the speeches of each of the Indigenous leaders.

A rights discourse, as such, largely appeals only to the political left of Australian society, as indicated by Pearson. The value to Indigenous people of the myths of mateship and of the fair go, is that they operate across political spectrums. This is also the case for the concept of mutual responsibility. Yet, like rights, these concepts are indexically open. As such, they can traverse the many interpretative communities that make up Australian society. They

70 in Kelly, supra n.30 at 10.
create an in-principle commitment to ensuring an equal playing field between Indigenous and non-Indigenous Australians, allowing for the second step, the struggle for how these vessels of meaning should be filled.

It may be that the myth of the “fair go” is just that. The increasing gap between rich and poor, the “haves and have-nots” in Australia, is testament to the fact that some people have a fairer go than others. One need only look at the data confirming Indigenous disadvantage. However, this is the stuff of myth, of truth as characterised by Nietzsche. The point, and the hope, is that while the truth on which Australian national identity rests may well be forgotten, that is, the truth of whether its citizens receive a fair go or benefit from mutual reconciliation, the illusion may well be harnessed towards new truths, the “true reconciliation” of which Australian Indigenous people speak.

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