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Traeger Park School: Closing the Options

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Introduction

This paper will explore some of the pedagogical, social and political issues surrounding a 1991 decision to close an urban school servicing Aboriginal students in the Northern Territory. In order to contextualise the discussion, a brief description of recent State and Federal government policy documents will be provided, along with a description of the school. This will be followed by an analysis of the decision and subsequent events. Some comparisons will be made with similar events and other court cases in Australia and overseas. This discussion highlights the conflict between the Federal government's policy of self-determination and the Territory government's assimilationist practices as well as the discourses used to override the parents' aspirations to keep the school open.

Languages

While Aborigines make up a very small proportion of the national population, here in the Northern Territory, they represent 22 per cent of the

population (Australian Bureau of Statistics, 1990: 98). The vast majority of Aboriginal people are speakers of Aboriginal languages. In the major towns there are many Aboriginal children whose linguistic heritages include one or more of the following languages or dialects — traditional Aboriginal languages, creoles, Aboriginal English and English.

The linguistic and cultural needs of urban Aboriginal students have on the whole, been neglected compared with their counterparts in remote communities. Many urban students are speakers of Aboriginal English. They have only relatively recently been included in discussions of national language policy. For instance, the *National Policy on Languages* (Commonwealth Department of Education, 1987) took some care to include them in the discussion of the needs of NESB (Non-English Speaking Background) students. Teachers have had little preparation in their pre-service courses that would prepare them to effectively teach Aboriginal students whose first language or dialect is not English.

National and Territory Policies

In recent times the educational needs of Aborigines have been aired in a number of government reports and inquiries. For instance, the *National Policy on Languages* claimed Aboriginal and Islander children were 'without question the most seriously disadvantaged group in Australian education on virtually every available indicator'

(Commonwealth Department of Education, 1987: 115); a position corroborated in *The Report of the Aboriginal Education Policy Task Force* (DEET, 1988) and the *National Aboriginal and Islander Education Policy* (DEET, 1990). One manifestation of this systematic disadvantage can be found in the Year 12 (end of high school) retention rates for Aboriginal (17%) and non-Aboriginal students (49%) (DEET, 1988: 7). Another manifestation of this systematic disadvantage can be found in the data concerning adult literacy/illiteracy. It has been estimated that 'at least one half of the Aboriginal population is illiterate or functionally illiterate' (DEET, 1988: 33).

As a consequence of this rather dismal picture, the Commonwealth government has developed a national policy document, in collaboration with the states and territories, which has set the objective of achieving 'equity in the provision of education to all Aboriginal children, young people and adults by the year 2000' (*The Report of the Aboriginal Education Policy Task Force* [AEP] DEET, 1988: 16). The AEP policy and its subsequent implementation has been targeted to redress the structural inequalities repeatedly documented in government reports. Affirmative action strategies tied to additional funding have been negotiated with states and territories in order to begin to change the structural location of Aboriginal students.

Within the AEP policy four aims were espoused, the first and most crucial being 'To ensure Aboriginal involvement in educational decision making' (AEP Summary, 1989b: 1). It was agreed that education authorities would 'establish effective arrangements for the participation of Aboriginal parents and community members in decisions regarding the planning, delivery and evaluation of pre-school, primary and secondary education services for their children' (AEP

Summary, 1989b: 2). The achievement of the other equity aims were seen to be contingent upon fulfilling this aim.

The purpose of the AEP and the consequent *Northern Territory Strategic Plan* was to improve the educational services and outcomes for Aboriginal students. Additional money provided by the Commonwealth to the Northern Territory government was to allow for more generous provisions in the area of Aboriginal education. In their own *Strategic Plan* the Northern Territory noted the following (*Northern Territory Strategic Plan*, 1990: 6):

lack of involvement and control by Aboriginal people in their own education and training often leading to inappropriate provisions. This in turn results in frustration, and lack of motivation in participating in programs which Aboriginal people feel will be ineffective.

So the subsequent AEP and *Northern Territory Strategic Plan* were designed to turn that structural inequality around.

Finally, the last few years have seen constant attention focussed around the issue of Aboriginal deaths in custody. A Royal Commission has reported on the broad contextual factors contributing to high Aboriginal custody rates and the subsequent deaths in custody. The 'single most important theme to emerge from the Royal Commission' has been:

the need to put behind us a history of dispossession, dependency and efforts at forced assimilation and move decisively into a new era of Aboriginal and Torres Strait Islander empowerment and self-determination (Aboriginal Deaths in Custody: Overview of the Response by Governments to the Royal Commission, 1992: 3).

The Royal Commission noted the need for 'more appropriate education opportunities' which acknowledged cultural differences (1992: 7). Only two out of the ninety-nine Aboriginal people whose deaths were investigated had completed secondary education (1992: 41). Along with many other factors, inadequate education was seen to have contributed to the plight of these Aboriginal inmates. The Royal Commission, while endorsing the goals of the AEP, found that they were a long way from being achieved. In particular, it was noted that 'Aboriginal and Torres Strait Islander involvement in local educational decision making processes' was still restricted (1992: 41). Schools were too often 'unable or unwilling to accommodate many of the values, attitudes, codes and institutions of Aboriginal and Torres Strait Islander society' (1992: 40). Similarly, within the community at large, the report found that there was 'widespread denial or lack of understanding of the existence of racism in Australia and of the "relentless discrimination" against Aboriginal and Torres Strait Islander people' (1992: 23).

In summary then, the overriding theme to emerge from these documents has been to establish the extent of structural inequality and then to suggest changes that usually begin with Aboriginal involvement in decision making. Aboriginal parents, communities and teachers are to be the central players in setting the agendas, defining the problems and creating the solutions.

This paper will use the closure of Traeger Park school to explore the gap between policy and practice and some of the issues arising from the struggle surrounding its closure. For the purposes of this paper the policy developments in the field of indigenous education will be taken at face value, rather than rigorously critiqued for their normative assumptions (see Nakata 1991 for an important theoretical critique of the AEP).

Traeger Park School, Alice Springs, NT



Traeger Park School is in Alice Springs, a small centralian rural town. In the early 1980s Brian Gray worked at Traeger Park School in Alice Springs, which even then had a majority of Aboriginal pupils. The Aboriginal students were either learning English as a second (or third) language or as a second dialect. In collaboration with Julia Price and other teachers in the school, they developed an integrated approach to language teaching, known as Concentrated Language Encounters. Traeger Park became one of the few success stories in the otherwise bleak terrain of Northern Territory Aboriginal education.

Gray and the Traeger Park teachers had managed to develop an approach to language teaching which was built upon a sound theoretical base as well as upon applied classroom research. They had constructed the language curriculum around the ideas of text and context. At the time, this was a breakthrough which has had ramifications around Australia. The range of oral and written texts taught included those required for further learning in the school, as well as those considered useful for negotiation within the wider community. An early explanation of this approach can be found in Gray (1985).

A few central features of the approach developed at Traeger Park included:

- a climate of trust between staff, students and parents;
- a pedagogy based upon small group work;
- dealing with whole texts rather than isolated vocabulary and sentence structures;
- planning themes that dealt with the topic or

field over a lengthy period of time (i.e. in-depth coverage) — while theme work has become common-place, it is usually not as rigorously developed as it had been at Traeger Park;

- negotiating meaningful texts with students based on shared experiences;
- modelling classroom interaction on language learning interaction in the home;
- integrating language and culture learning;
- visible pedagogy and explicit attention to language as a system.

While these features might appear a little more common-place today, they were real innovations in the early 1980s. Some of these features of the Traeger Park approach will be briefly expanded upon below.

Concentrated Language Encounters

The model of language teaching known as Concentrated Language Encounters, developed by Gray, was partly designed to avoid the problems of implicit models of teaching with Aboriginal students. Gray had begun by using implicit mainstream models of teaching. However, as they appeared to constrain learning he gradually developed more explicit teaching approaches which moved students from the known to the unknown. The explicit approach based on text, context, shared experiences and scaffolding was more successful with these students.

While the majority of NESB Aboriginal students in mainstream urban schools are subjected to the 'sink or swim' approach to English language teaching, Traeger Park had created a promising alternative approach. There are only a handful of primary programs around Australia that could be said to be making a real difference for Aboriginal

students. For this reason, Traeger Park had become a model for many other schools around Australia. It had a national and international reputation as a school in which Aboriginal students could both affirm their Aboriginality and learn mainstream 'ways with words'.

Negotiating meaningful texts with students based on shared experiences

One of the strategies that emerged from this work was called Group Negotiated Writing, in which the teacher jointly negotiated texts with students based on shared history of previous negotiation. While a theme was being explored, the teacher used this strategy to provide the context within which the particular genre being developed could be scaffolded (e.g. a report or a narrative). This proved to be a powerful way of modelling the genres being taught. Over time students incorporated the features of the particular genre in their individual writing.

Visible pedagogy

One of the key elements of the Traeger Park approach to language teaching was its emphasis on visible pedagogy. While most TESOL (Teaching English to Speakers of Other Languages) teachers today would agree that a more visible pedagogy is warranted, that was not the case a few years ago. Mainstream teachers are still not easily convinced of the need for a more visible pedagogy for their NESB students.

Overt knowledge about language was built into the teachers' and students' meta-knowledge about language. This allowed teachers to positively respond to the cultural and linguistic resources the students brought with them to school. For instance, teachers without an overt knowledge of

linguistic issues often misinterpreted dialect or second language 'interference' inappropriately. With that kind of knowledge, teachers could respond positively to linguistic diversity. The program took account of language variety in terms of dialect, register and genre.

The term 'visible pedagogy' was coined by Bernstein (1977: 119). It is contrasted with 'invisible pedagogy' or implicit models of teaching. Mainstream language education is dominated by implicit models of teaching and learning. These implicit models have been critiqued from a wide variety of sources over the years. For instance, Bourdieu and Passeron (1977) suggested implicit models of teaching were among the practices used to keep outsiders excluded from valued knowledge. They hypothesised that the greater the cultural and linguistic distance between the home and the school, the less successful will be the learning/teaching of the school. They also argued that the more implicit the school's pedagogy, which presupposes prior attainment, the more locked out will be the outsiders. This enables the 'possessors of the prerequisite cultural capital to continue to monopolise that capital' (Bourdieu and Passeron, 1977: 47). These positions suggest that invisible or implicit pedagogies work least effectively with students whose cultural and linguistic backgrounds are most different from that of the schools.

Applying pedagogies developed in one socio-cultural context to other contexts is problematic. For instance, research by Walton (1986) considered young Northern Territory Aboriginal children learning to write in an urban English-medium program. The children's first languages were Kriol and other Aboriginal languages. That study raised questions about the application of a model of teaching and learning developed from

research with literate culture English-speaking children (e.g. 'process writing' and other 'experience-based' pedagogies) to cross-cultural contexts. The model was ethnocentric in that it assumed all children came to school with the same repertoire of experiences. When applied in a cross-cultural context the implicit model of teaching disadvantaged many Aboriginal children. The consequence was that literacy learning was differentially available to children under the same regime.

Other educators such as Delpit, a Black American researcher, have also questioned invisible pedagogies when applied cross-culturally (1988). What is often missing or under-emphasised in mainstream pedagogy is a recognition that children come to school with different kinds of experiences with oral and written language.

Taken together, these arguments suggest that a more explicit or visible pedagogy is required to effectively teach students whose cultural and linguistic backgrounds are different from those of the schools. Yet many mainstream teachers of NESB students have had little contact with these issues in the research literature. In the mainstream setting, it is quite possible that the educational consequences of many current mainstream approaches to language teaching remain 'invisible' to teachers without adequate training in these cross-cultural educational issues. Without such training, mainstreaming Aboriginal students will be counter-productive to their academic development.

The Decision to Close the School

In 1991 the Northern Territory Minister for education announced a major round of cut-backs in the context of a Territory-wide cut-back exercise

in all portfolios. Included in the cuts was the decision to close Traeger Park School. Initially, the Northern Territory Education Minister gave a number of reasons for closing the school including cost savings and declining enrolments. However, in discussions in the media it became apparent that the Minister had other underlying reasons for closing the school which the parents concerned saw as racially discriminatory.

The Minister made a number of statements on ABC Radio (8DDD, 28.7.91) concerning the decision, including the following:

Traeger Park was never part of the Aboriginal Education Program. Traeger Park is an urban school, where a very unsatisfactory situation had developed — where all children at the school, except four, were in fact Aboriginals. And I don't think that's in the long-term interests of Aboriginal children, who have to learn to take their place in the wider community — they have to learn to compete, and they are going to compete with white children and with white adults.

This statement begins with the erroneous information about the school not being covered by the *National Aboriginal and Torres Strait Islander Education Policy* (AEP, 1989). One is left wondering why urban Aboriginal students were not thought to be included in a national initiative for all Aboriginal students. Was the Minister assuming the AEP would only apply to Aboriginal students in remote communities? If so, why?

On what basis is he reinscribing the distinction between urban and community Aborigines? Could this privileging of remote Aborigines be a manifestation of the old dichotomies which have served to divide the Aboriginal community: authentic/not authentic, remote/urban? One does

not have to go very far back in time to place these dichotomies as contemporary re-workings of the old biological models of race ('full blood'/'half caste').

The crux of the issue is captured in the middle section which explained the reason for closing the school — it had turned into an urban Aboriginal school. Traeger Park had of course, been a school with a reputation for catering well for Aboriginal children for about a decade, so it is not surprising that it had attracted Aboriginal students. Over the years it had become predominantly Aboriginal. The changing demographic patterns of the community contributed to this trend as the non-Aboriginal population moved into new suburbs.

The Minister's assimilationist argument was that the students would be better off distributed around other schools in Alice Springs, where they would be a dispersed minority group. The Minister had stated publicly (ABC 7.30 Report) and privately to the Principal of the school that the idea of an all-Aboriginal school at Traeger Park was an 'educational heresy'. The last part of the quote inscribes the Minister's assimilationist agenda, with non-Aboriginal people determining what is in the best interests of Aboriginal students — in this case learning to 'take their place in the wider community — they have to learn to compete, and they are going to compete with white children and with white adults'. This position is also assimilationist because it assumes Aboriginal students should measure up to some mythical white norm; it presumes all students should be judged from the position of a white centre — thereby excluding alternative constructions of Aboriginal aspirations.

This position assumes a number of questionable propositions. It sets up either/or choices of remaining in remote communities or being dispersed and assimilated into town schools.

Where does this either/or discourse come from?
And what other options does it exclude or silence?

Hodge and Mishra (1990) describe these discourses as providing restricted choices between 'Aboriginalism' (which silenced or appropriated Aboriginal voices) and 'assimilation' (which denied Aboriginality). Building upon Said's (1978) work on 'Orientalism', Hodge and Mishra describe Aboriginalism as working discursively to construct Aborigines as 'others' while simultaneously creating the space for non-Aboriginal experts to speak on behalf of those invaded and silenced (Hodge and Mishra, 1990: 71). Aboriginalism divides Aboriginal people into two groups, the 'traditional' and the 'non-traditional', attributing authenticity and homogeneity to the first group while describing the other group as having lost their culture (Cowlshaw, 1988: 60-61).

Using an out-dated, static, anthropological model of culture, Aboriginalism divided the Aboriginal community as part of the project of silencing them. It provided the rationale for de-legitimising the more vocal and articulate English-speaking Aboriginal spokespersons. However, as Cowlshaw (1988: 77) has noted, Aboriginal people have responded to their post-colonial circumstances by using and changing their cultural resources.

Since the late 1960s, there has been a revival or resurgence of Aboriginal languages, arts and literature, which could be described as a 'cultural renaissance' (Hodge and Mishra, 1990: 91). It is only relatively recently that Aboriginal people have emerged out of the colonial period of silence. At least in some places they are 'being written back into the history', making an impact in literature and art, and being 'valued as a major component of Australian cultural production' (Hodge and Mishra, 1990: xiv).

In this instance, as we will see later, it was the parents who contested their silencing and the forced choices of 'traditional'/'non-traditional', silence/assimilation. Aboriginal people have 'never been mere passive victims' of these colonial practices (Hodge and Mishra, 1990: 72). They have responded to the discourses of Aboriginalism and often rejected the false dichotomies (us/ them) and 'forced choices' that this imposed upon them (1990: 74). The choices offered have been limited to 'accommodation' (assimilation) or 'separate existence' (1990: 74). Aboriginal people have survived by contesting, adapting and transforming the options proposed for them.

An Aboriginal response to this silencing can be found in the writing of Nurra (1992) who recalled her childhood experiences of being banned from using her language or having any sustained contact with her family in a Northern Territory mission school/dormitory. Nurra described the purpose of these practices as training 'in the western way of life' in order to 'make us forget the Aboriginal way of living' (1992: 18). These practices represented some of the most damaging manifestations of assimilation and are a constant theme in the autobiographical writings of contemporary Aboriginal writers.

One of the problems with the construction of identity by non-Aborigines has been their 'location of "the real Aborigines" simultaneously in the remote past and the outback' (Beckett, 1988: 194). This construction leaves contemporary Aborigines with the unenviable options of either affirming an unchanging essentialist traditional identity (separation) or 'the reproach of inauthenticity' (assimilation) (Beckett, 1988: 194).

Contemporary Aboriginal people are attempting to create a broader range of options. They are constantly re-constructing identity and culture;

culture and identity are fluid social constructs which are constantly re-negotiated rather than fixed, timeless, biological constructs.

Colin Johnson [Mudrooroo] described the effects of Aboriginalism as follows:

Aboriginal culture [cultures] alone is [are] indigenous and rooted in the soil. They, like every other culture on the globe, are subject to change and are constantly changing. I want to emphasise that such a thing as a stone-age culture [static and unchanging], is a myth created by those who should have known better and still put forth by those who should know better (Colin Johnson [Mudrooroo], in Davis and Hodge, 1985: 2).

Some Aboriginal educators from Arnhemland, have used the term, 'two way' education, to describe the kind of education they want. This idea avoids the either/or choices of silence or assimilation. It suggests another option available in order to achieve a high level of skills without destroying their culture. It is at least in part, a manifestation of self-determination policies which have created a space for some Aboriginal people to challenge silence, assimilation and apartheid:

To live in both worlds we need to achieve a high standard in education but to keep our own identity. The mission school gave us only one side of this. They did teach us to read and write whereas the following generation did not have the same level of skills. The present leaders of my people are the products of the mission system and are thankful of their skills. But we were told what to learn and punished for using our own languages. What we need now is education which can teach a high level of skills but without the destruction to culture...

...Yolngu must own the school program. Without this we will feel crushed and lose our self respect and self-identity - we will be living on other people's programs like it was in the past, in the mission days (Wali Wunungmurra, 1988: 69, in McConaghy, 1991: 114).

In an era of supposed self-determination, it is incumbent upon non-Aboriginal Australians to listen to Aboriginal voices about education. There can be no self-determination while non-Aboriginal people persist in the view that they know what is best for Aboriginal people. By examining this issue of the closure of Traeger Park School we may learn something of how competing discourses about the closure construct Aboriginality and where those discourses are coming from. Most importantly, in this instance, the Federal government discourse of self-determination competed unsuccessfully with the assimilationist discourse of the Territory government.

The parents' discourse was listened to in the Human Rights Commission, yet here too, their discourse was overridden by assimilationist discourses. This case also raised many issues about the *Racial Discrimination Act*, 1975 under which the issue was eventually heard.

The Parents' Response

The decision to close the school was made without any consultation with the Aboriginal community in Alice Springs or the teachers at the school. Parents were so concerned with the decision to close their children's school that they took the issue to the Human Rights Commission. The parents argued that the Minister has breached the *Racial Discrimination Act*, 1975. The hearings were held in Alice Springs (11-13 December 1991) before Commissioner William Carter.

Merv Franey, a parent spokesperson, argued the case for keeping the school open on a number of grounds. Firstly, it was in keeping with the rights of Aboriginal people to self-determination and culturally appropriate education. Secondly, the parents argued that dispersing their children into other local schools would dissipate the real gains being made by their children. Franey countered the suggestion that his children would be adequately catered for in other 'mainstream' schools. The kind of 'mainstream education' being offered was in his view a version of the older 'assimilation' practices which had failed his people in the past. As far as the parents were concerned the goals of achieving academic, social and cultural outcomes were better achieved in an Aboriginal school with programs designed to meet their children's needs (Franey interview, ABC Radio, 8DDD, 10.10.91).

Aboriginal educators' responses

One might well ask what was the Aboriginal Education Consultative Group doing while the decision to close the school was being taken? *Feppi*, as the group is known in the Northern Territory was actually in limbo at the time of the ERC (Estimates Review Committee) cuts. The term of the past council expired in December 1990. The Minister announced in March 1991 a major re-structuring of *Feppi*. He eventually proposed a structure which functioned as an Advisory group to the Minister. The members of *Feppi* were all to be Ministerial appointments. This proposed structure fell short of the hopes of many people for an independent, representative consultative group. The new *Feppi* was not yet in place at the time of the ERC cuts so there was no formal Aboriginal group from which the Minister could seek advice. So, while these cuts were going on, the voice of *Feppi* was silent. In a community where one quarter of the school population was Aboriginal this was a disgrace.

Prominent Aboriginal educators spoke in support of the parents case either in the media or as 'expert' witnesses at the hearing. For instance, Isaac Brown and Peg Havnen were interviewed on ABC TV (ABC TV News and 7.30 Report, 3.8.91). Isaac Brown is Director of the Centre for Aboriginal and Islander Education (CAIS) at Northern Territory University, and later became Chairperson of *Feppi*. Peg Havnen was at that time Deputy Director of CAIS. Isaac Brown expressed concern that 'the impetus' of the Traeger Park program would be 'lost when that school was disbanded.' He countered the mainstreaming argument with his own evidence of the success of many enclave groups. He argued that 'when Aboriginal groups maintain esteem and ability to work in large groups of their own, they are better able to compete in mainstream Australia'.

Peg Havnen took up the issue of the Northern Territory government's practice of 'divesting itself of its educational responsibilities for Aboriginal people'. Peg Havnen was involved in the negotiations about the implementation of the *National Aboriginal and Torres Strait Islander Education Policy* in the Northern Territory (AEP, 1989). She argued that the 'intent' of the AEP Policy was being undermined by this decision:

I think the intent of the National Aboriginal Education Policy was that Aboriginal involvement in the consultation process about education and decision-making, was to be one of the main changes to education (Peg Havnen, ABC TV 7.30 Report, 30.7.91).

As Peg Havnen had been involved in the negotiations about the AEP she was well aware of its intent. It was clear that the decision to close the school was in not in keeping with the intent of the aims of the AEP. The purpose of the AEP and the consequent *Northern Territory Strategic Plan* was to improve the educational services and

outcomes for Aboriginal students. The additional money provided by the Commonwealth was to allow for more generous provisions in the area of Aboriginal education. They were designed as affirmative action policies to turn around structural inequality. Neither the parents nor *Feppi* were properly consulted over this decision. The first aim of the AEP was being flagrantly ignored in this situation.

Human Rights Commission

Eventually the case was taken to the Human Rights Commission by a group of 59 Aboriginal people. The hearing in Alice Springs was held in December 1991 and the Commissioner, William Carter, later released his determination on the matter (hereafter referred to as *ASSPA vs Northern Territory Minister for Education*, 26.2.92).

The parents argued that the Northern Territory Education Minister at the time had breached the *Racial Discrimination Act, 1975* in closing Traeger Park School because his decision to close the school was partly based on race. According to the Commissioner's determination, in terms of the provisions of the *Racial Discrimination Act, 1975* it was necessary to prove:

firstly, there must be an act which involves a distinction, exclusion, restriction or preference which is based on race, colour, etc. and secondly, which act has the purpose or effect of nullifying or impairing recognition, enjoyment or exercise on an equal footing of any human right such as 'the right to education and training' (*ASSPA vs Northern Territory Minister for Education*, 26.2.92: 12).

In relation to the first part, the Commissioner, was asking whether the Minister's decision to close the school 'involved a distinction, restriction,

exclusion or preference based on race, colour, etc?' (*ASSPA vs Northern Territory Minister for Education*, 26.2.92: 16). In fact, Carter found the decision to close the school 'was one "based on race"' (1992: 29). However, he also determined that the Minister's 'subjective purpose' was for the 'maintenance of educational opportunities and services for those children' (1992: 30). So we have a decision which seems to take the intent of the Minister at face value and privilege it over the position of the parents:

I am in no doubt that it was the mind of the Minister that Traeger Park Primary School should be closed because it was in the nature of an Aboriginal enclave... Nor am I in doubt that his decision was based on race, albeit in his view, a decision which would in the longer term be to the suggested advantage of the Aboriginal community (1992: 28-29).

The Commissioner then asked whether the Minister's decision to close the school and send the students to other schools, was made with the 'purpose or effect of nullifying or impairing recognition, enjoyment or exercise on an equal footing of any human right such as "the right to education and training"' (1992: 12). The Commissioner determined that the Minister's decision was based on the view that mainstreaming the students would be in their longer term interests (1992: 26-27).

The students' rights to education were, in the Commissioner's interpretation of the Act, sufficiently protected so long as they have access to some form of education. Their rights did not seem to extend to the form that education took, and certainly took no account of any principles of self-determination:

It cannot sensibly be said that the students who formerly attended Traeger Park

Primary School will be denied the enjoyment or exercise of their right to education and training (1992: 33).

Despite the evidence from parents, ex-students and Aboriginal education 'experts' such as Isaac Brown, Brian Gray and Merridy Malin, who argued that mainstreaming in town schools would disadvantage the Traeger Park students, the Commissioner was not sufficiently convinced of this argument (1992: 35-37).

However, the Commissioner did affirm the responsibility of the Department of Education to ensure that the students' needs would be met when they were moved to other schools:

Those in authority must therefore develop an acute awareness of the future needs of the children from Traeger Park School as enumerated by Mrs Webb, Mrs McLaughlin and Mrs Liddle and they will fall far short of achieving their expressed aims and objectives for Northern Territory education if they do not (1992: 41).

The Traeger Park School ought to have presented to the Department and the Minister a very special concern... The special needs of a special group of Aboriginal children in the Northern Territory will need to be addressed with all of the professionalism, concern, dedication and expertise which the Department professes that it is able to muster, if the enjoyment and exercise by these children of their right to education and training is not impaired to the extent that it is not enjoyed on an equal footing with others (1992: 42).

If someone were to do a follow-up study on what happened to the students since the closure of their school it might provide the evidence necessary to successfully appeal this decision. By the time the determination was made the school had been

closed and the students and teachers relocated. So the idea of appealing the decision was not pursued. However, the Commissioner's ruling does suggest the Department of Education has an on-going responsibility to ensure the rights of the students to education have not been impaired.

Has the Department fulfilled its obligations to these students? Are the students now enjoying unimpaired 'right to education'?

The Commissioner also questioned the Department's position of trying to negate the idea of Traeger Park school being recognised as an urban Aboriginal school. He cited departmental correspondence which clearly recognised this:

The Departmental witnesses were at pains to emphasise that the term 'Urban Aboriginal School' has no place in the official terminology of the Department of Education. On the other hand, there is ample evidence of the de facto recognition of the somewhat unique character of Traeger Park School when it is compared with other urban primary schools in Alice Springs (1992: 18).

In truth, Traeger Park Primary School can properly be described as an urban Aboriginal school (1992: 22).

Overall this case raised many dilemmas. The determination was predicated upon accepting the Minister's argument that the students would be catered for adequately in other schools, over the parents' argument that this would not be adequate for their children. It also implied the students' rights to education were not threatened because the students would be catered for just like any other student in mainstream classes/schools.

Is that the way we want our legislation to work? In the context of human rights, affirmative action,

and so-called 'disadvantaged' groups in our community, shouldn't our legislation work to affirm the need to take into account the specific needs of particular social and/or cultural groups? All of our policy documents point to the need to consult with the parents and the community regarding the education of Aboriginal students. Yet in this instance self-determination was shown to be hollow rhetoric, easily overridden by actions clearly designed to be assimilationist.

The Commissioner's interpretation of the legislation seems counter-productive to the purposes of affirming the rights of parents to demand education for their children that takes into account their particular needs. The parents had argued that the type of education available at Traeger Park School was culturally appropriate, affirmed their Aboriginal identity and provided the students with a sound academic education. They argued that the move to other schools would disadvantage their children and represented a step backwards to the old assimilation days. Despite all of the evidence provided to the Commissioner regarding the success of Traeger Park School and despite all of the international evidence suggesting minority group students have particular needs, this decision seems to imply that any kind of education is OK.

When the Commissioner's determination was made public, the lawyer acting for the parents was reported to have evidence that up to 35 former Traeger Park students had not enrolled in any school this year (*Sunday Territorian*, 8.3.92: 3). Against all the evidence to the contrary, the rest of the students are presumably enjoying their right to 'sink-or-swim' in the mainstream (DEET, 1988). The Human Rights Commission determination on the matter left many issues to be resolved. Who gained from this decision? Who lost?

Comparison with a Victorian Case

A very similar case involved the closure of Northlands Secondary College by the Victorian Education Ministry. Northlands Secondary College had developed a unique whole school approach to education, which according to the Aboriginal complainants, catered uniquely well to the needs of the Aboriginal students. The school was closed in 1992 and the case was heard by the Equal Opportunity Board in Melbourne in 1993. The decision was handed down in December, 1993 (hereafter referred to as *Sinnapan, Ms M., Mr G. Foley and Ors and State of Victoria*, 7.12.93).

Unlike the Traeger Park decision, in this instance it was found that the Aboriginal students were indirectly discriminated against by the action to close their school and send them to other schools. It was accepted that the effect of closing the school would be felt more by the Aboriginal students than by the non-Aboriginal students and that this had the effect of reducing their access to education.

It was found that the Koori students were indirectly discriminated against in terms of the effects of the decision to close the school:

a decision which, though on its face is neutral, has a disparate impact upon the Complainants because of their race (7.12.93: 26).

The state was ordered to re-open the school.

Unlike the Traeger Park decision, the Equal Opportunity Board's decision accepted the notion that providing the same education for Aboriginal and non-Aboriginal students did not guarantee

similar access to educational services. In both cases there was concern to prove whether Aboriginal students would be disadvantaged by the change of schools. However, in the Traeger Park case the Commissioner was not convinced of this, while in the Victorian case, the Board was convinced that the Aboriginal students would be more disadvantaged than the non-Aboriginal students, by the move to other schools. In the Victorian decision equality was not confused with sameness.

In this case the state of Victoria did not re-open the school. Instead it appealed successfully to the Supreme Court and had the Equal Opportunity Board's decision overturned (24.1.94). However, the fight is still going on. A recent newspaper report about the Supreme Court decision stated:

In his judgment on Monday, Justice Beech ordered the Government not to sell or to dispose of any assets of the school pending an appeal to the Full Bench of the Supreme Court against his decision (P. Weekes, *The Australian*, 26.1.94: 5).

Comparison with a Landmark United States Case

The decision of the Victorian Equal Opportunity Board was similar to landmark decisions in the United States, including that of *Lau vs Nichols* (1974). In that decision it was found:

There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum (in Ovander and Collier, 1987: 34).

This case was brought by Chinese NESB students who successfully argued that they were denied equal educational opportunity when they were

instructed in mainstream classes (Teitelbaum and Hiller, 1977: 141). Cases like this one in the United States Supreme Court provided the impetus for special intervention in the form of NESB and bilingual education programs.

This case shifted the onus of proof onto the education providers to prove that they were effectively providing for the needs of minority students (Teitelbaum and Hiller, 1977: 153).

This case and others in the United States used the *Civil Rights Act, 1964* to the advantage of minority group students who were being ignored in mainstream classes. In the United States, court cases have been won by parents on the argument that their children were being disadvantaged by 'sink-or-swim' approaches to their children's education. Yet in Australia, our legislation does not seem to necessarily affirm those rights. To ignore the specific needs of Aboriginal students in the name of treating all people 'equally' is a very good example of indirect discrimination. This position ensures that the inadequate provision of Aboriginal education is maintained and that the few existing exemplary programs are threatened.

The Discourse of Choice

To return to the Traeger Park story... having decided to close Traeger Park school the Education Department then called for expressions of interest for the use of the school buildings and grounds. The Catholic education system was successful and were given the school at no cost. This is in keeping with other decisions of the Northern Territory government over recent years. The Federal government did make an offer of funding to keep Traeger Park School open for 12 months while proper consultation occurred with the Aboriginal community. However, this offer was rejected by the Northern Territory government.

There is a pattern emerging of abrogating responsibility for education generally and Aboriginal education in particular. There is a preference by the Northern Territory government to hand over responsibility to church organisations. These decisions are sometimes presented to the public disguised in the rhetoric of choice. However, it is clear that one of the underlying purposes is to shift the cost burden from the Northern Territory government to the Federal government and shift responsibility from the Northern Territory government to the churches; while obstructing Aboriginal self-determination.

In the case of Traeger Park School, the parents wanted the school to remain as a part of the public school system. Parents' wishes are only listened to when they 'choose' to shift to the private church sector. For example, in another conflict in 1989, regarding Aboriginal parents' aspirations for better schooling for their children, the then Minister for Education explained why he was willing to obstruct their wishes for an independent Aboriginal school in Tennant Creek:

Interviewer: You have also said Federal Government policies in this area are creating racial disharmony.

Minister: Well I say that, not to take away from those people who really do have good intentions in setting up Aboriginal schools, but the Federal Government seem to be bending their rules. For example they're looking at establishing a school in Tennant Creek...there is spare capacity in the Primary School...it's irresponsible for the Federal Government to be talking about setting up a black school in Tennant Creek...it's best to have a special unit in the local school. The Northern Territory government is about integration, not segregation (ABC Radio Gerry Gannon and Northern Territory

Minister for Education 8.6.89 About 8.20am).

No doubt many of the parents involved in the Traeger Park case have experienced the 'special unit' solution to 'integration' in their own school careers.

Aboriginal parents' wishes are used in the public arena only so long as they support the idea of a private church school. It has been noted that their wishes are not acted upon when they want to stay in the public sector (e.g. Traeger Park) or have an independent (non-church) Aboriginal school (e.g. Tennant Creek). The Minister uses the discourse of choice when it suits him. The real range of educational choices are being eroded by the decision to close Traeger Park School.

By re-examining the discourse of choice in the specific context of the decision to close Traeger Park School, a serious gap between the discourses of self-determination and the assimilationist discourses of the Northern Territory government has been illustrated.

Affirmative action or apartheid?

The Northern Territory Department of Education's arguments seem to depend upon a fundamental misreading of affirmative action. In other statements previous Northern Territory Ministers of Education have had the same problem in confusing the practices of what they sometimes call segregation or apartheid with the practices of affirmative action. The differences between these two sets of practices might be more clearly articulated in terms of intent — who is controlling decision-making and outcomes. While it may not be possible to generalise about particular practices such as mainstreaming compared with enclaves, it is possible to differentiate between them as either affirmative action or apartheid in particular

contexts, by considering a number of contextual factors.

Affirmative action is designed to improve options, while apartheid restricts options. Affirmative action has strong community involvement and support while apartheid has little support from the community being segregated. Affirmative action is designed by and/or with minority groups in order to re-affirm their distinctive identity. Apartheid is designed by the majority group in order to protect themselves from contact with the 'other' group. Affirmative action practices in education are designed to maximise control by the minority group over the education of their children. Apartheid places control firmly in the hands of the dominant group.

It might be useful to consider a related feminist position regarding the social construction of gender differences. Baron (1989) argued that the real issue with regard to men and women 'may not be whether different treatment of men and women is justified, but what differences are recognised and who determines which differences matter' (1989: 490). Herein lies a feminist distinction between affirmative action and apartheid compatible with the distinctions being made in this instance with regard to Aboriginal education.

Affirmative action in the feminist arena is concerned with addressing women's differential social location. For instance, Bacchi (1989) has argued the following case, which I have shifted to the Aboriginal case:

1. Aborigines need equal treatment in the sense that they do not want to be discriminated against.
2. They need affirmative action to compensate for differential social location.

3. Their specific needs have to be included in the standards by which services are provided (adapted from Bacchi, 1989).

So affirmative action implies a recognition that there are specific needs which can be met so that particular groups of people are not excluded from services. When strategies are devised by the group concerned to improve their position in relation to services this is clearly different to apartheid, where the dominant group decides their needs for them.

Affirmative action is designed to achieve better educational outcomes for the minority group. Apartheid is designed to 'keep people in their place'. Apartheid practices are examples of explicit racism. Affirmative action is an example of an anti-racist or anti-sexist strategy.

The same practice, in different locations or sites, may be construed as affirmative action or apartheid, depending upon the specific contextual features of the practice. So for example, in the educational context, having an all-Aboriginal school in an urban centre, if it is the wish of the Aboriginal community, affirms Aboriginal identity while it teaches their children well, may be an instance of affirmative action. While placing Aboriginal students in all-Aboriginal classes without the informed consent of their parents may well be an instance of apartheid.

By the way, if we were to take the argument against having all-Aboriginal schools in the Northern Territory to its logical conclusion we might need to close about 80 schools in Aboriginal communities. Are we going to put all of the students in boarding schools away from home so we can save them from the perils of an all-Aboriginal environment? Does this sound familiar?

Institutional racism

Will the decision to close the school produce a more equitable distribution of life chances or will it contribute to reproduction of inequality? We might also ask if the decision works with or against institutional racism? Institutional racism exists within apparently liberal progressive practices. It can exist in classrooms with teachers who declare they like children of difference. It can exist in government policies and practices even when spokespersons declare their position is in the best interests of the children of difference.

One of the main ways racism works is to use the strategy of 'blaming the victim' for their differential social location. For instance, an earlier Northern Territory Minister for Education provided us with this illustration:

Minister: Purpose of visits (to Aboriginal communities) to talk to Aboriginal people... NT is leading the field... real issues are poor nutrition, hygiene, lack of sleep, variation of skin grouping, selection of staff, drinking ...not a matter of lacking in what we are providing (Northern Territory Education Minister and unknown reporter, ABC Radio, 5.5.89).

Having blamed Aboriginal culture, poverty, teachers — anything really so long as it's not the government's policies and practices — this quotation provides us with an illustration of blaming the victims which is characteristic of the workings of institutional racism.

The decision to close the Traeger Park School needs to be examined not just as an isolated instance of racial discrimination but also as a manifestation of institutional racism which has a very long history in Northern Territory educational practices. To do this we might ask how will the decision improve the life chances of the students?

How will it work against the reproduction of inequality? How will it counter the distrust between Aboriginal parents and the school system? How will it achieve the goals of the AEP? Institutional racism is not dependent upon overt hostility. Rather, it may be more appropriate to look to the 'consequences of actions and beliefs' (Cowlshaw, 1988: 6). Institutional racism can exist in classrooms with teachers who insist that they like children of difference. It can also exist in government decisions even when it is apparent that the decisions have been made with the interests of the children in mind.

A Level Playing Field?

The Minister at the time of the decision to close the school seemed to be working on the assumption that there was a level playing field in operation. He seemed to be imagining that by declaring that he was treating everybody the same he was therefore treating everybody fairly. For instance, the Minister suggested that the ERC cuts in education were 'not hurting Territory Aborigines any more than the rest of the community' (ABC Radio, 8DDD, 28.7.91).

This position contravened and undermined the intent of the AEP, by ignoring its premise that we could turn around outcomes by working with Aboriginal parents. The Minister refused to consult with the Aboriginal parents at Traeger Park. He has also ignored much of the evidence regarding the structural location of Aborigines in the education system as evidenced in many government reports (e.g. DEET, 1988).

Assuming a level playing field in the light of contrary evidence is a further example of institutional racism. When the specific needs of Aboriginal students are ignored in the name of treating all people 'equally' we have a clear example of hidden or indirect discrimination.

This position makes sure that the cuts to services are felt more by those sections of the community who are most vulnerable and thus perpetuates their structural location. We have seen in the history of minority education that providing the same education does not ensure equality. Structural inequality may be overcome by affirmative action that takes account of location determined by factors such as colonialism, class, gender, ethnicity and so on.

There has been a long history in the minority education literature of trying to make the point that equitable education does not necessarily mean providing the same education. For instance, as long ago as 1970 Baratz and Baratz argued that equating 'equality with sameness' was an example of institutional racism (1970: 31-32). The more recent approaches to minority education and the issues of gender as well, have made the point that affirmative action is needed to overcome structural inequality.

The mainstreaming solution — equality equals sameness — has after all been tried for a long time both here and overseas. The effectiveness or otherwise, of mainstreaming is dependent upon various contextual factors. I am not arguing that mainstreaming *per se* is good or bad, but that when it amounts to 'sink and swim' it has a long history of failure.

There is Australian research which suggests that even in classrooms with caring and competent teachers Aboriginal children may get a raw deal. For instance, the research of Malin (1991) gives some indication of how structural inequality is created and maintained in mainstream classrooms. Malin's ethnographic research within urban mainstream primary classrooms showed how even the well intentioned and apparently competent teachers re-created failure for Aboriginal students.

Being a competent teacher of mainstream children was not sufficient to turn this around.

In the overseas literature there is further evidence of differential treatment that worked against children of difference in mainstream classes. For example, streaming within mainstream classes is a common practice and it has been found that teachers stream students on quite subjective criteria. They then teach the groups in their classes differently, so the top group gets active engagement with text, while the bottom groups are systematically deprived of active engagement with text (Mc Dermott, 1978 in Gumperz, 1981).

There is also evidence that special classes for children of difference within mainstream schools can work against their best interests academically (Walton, 1986). So it may not be an issue of special versus mainstream, but rather what are the contextual factors operating to create success and failure in each situation?

Specialist teacher training in Aboriginal education and TESOL is one of the contextual factors that might matter. Similarly, there is evidence that school/community relations make a significant difference. There is also evidence that explicit pedagogy makes a difference. My argument is that urban Aboriginal students do need teachers with specialist expertise in Aboriginal Education and TESOL. They also need to be part of a community of parents, teachers and students who are working together in their interests.

Other Possible Scenarios?

Since Traeger Park School had turned into a mostly Aboriginal school, it might have been more appropriate to have given it special consideration and support. With support it could

have continued to provide the educational community with a model of how to teach Aboriginal children. We might have asked why had the Aboriginal parents developed such a level of trust in that school? How could we assist in this process? Could lessons be learned for other schools?

This case should not be seen as one either of mainstreaming all the Aboriginal students in town or of offering special programs. Surely it is a matter of maintaining a range of options so that parents can decide which option is appropriate for their children? That would have been in keeping with the principles of self-determination.

The Northern Territory government is limiting the choices available to Aboriginal parents and students. At Traeger Park they had the option of academic success alongside of respect for their language and culture — all in the context of a predominantly Aboriginal school. That option has proven to be unacceptable to various Ministers of Education. The onus should be on them to prove to Aboriginal parents why they know better than the parents what is good for those students.

The action to close Traeger Park School was a further example of the Northern Territory Education Department's refusal to come to terms with Aboriginal self-determination and the continued aspirations of the parents for a better deal for their children. As a community we should be nurturing programs, like that of Traeger Park School and Northland Secondary College, that have community support and are meeting community cultural and academic aspirations.

There are only a handful of primary and secondary programs around Australia that could be said to be making a real difference for Aboriginal students; Traeger Park had become a model for

many other schools around Australia. The confidence of students, staff and parents had grown with the school's success. Closing these schools posed a serious challenge to that trust and confidence — so hard won and rare. It has also shown the enormous gulf between federal rhetoric and local state/territory educational practice.

Conclusion

The decisions to close schools without adequate consultation with Aboriginal parents and the wider Aboriginal community shows enormous lack of respect for Aboriginal people. The students, parents and teachers involved should have their aspirations assisted, not hindered by the various Departments of Education. It seems remarkable that we are in an age of change, post-Mabo, with talk of reconciliation, yet we still fail to listen and hear Aboriginal parents' aspirations for their children's education.

We need to think again before we repeat these stories of silencing Aboriginal students and parents and privileging non-Aboriginal, Aboriginalist, assimilationist discourses. We need to re-examine our priorities as a community; re-examining the structural constraints built into our policies and practices. We need to negotiate new directions in Aboriginal education with the appropriate communities of Aboriginal parents.

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