This is the published version


Available from Deakin Research Online

http://hdl.handle.net/10536/DRO/DU:30028467

Reproduced with the kind permission of the copyright owner

Copyright: 2010, Taylor and Francis
Chapter 9

‘Indigenous peoples are not multicultural minorities’

Cultural diversity, heritage and Indigenous human rights in Australia

Michele Langfield

Despite the existence of international instruments to safeguard fundamental human rights, specific rights of Indigenous peoples worldwide remain inadequately protected. Governments have practised enforced assimilation and varying degrees of ethnocide and genocide, including massacres, child removal, and eradication of culture, spirituality and languages (Havemann 1999a: 2–6; Tickner 2001: 2). Indigenous peoples are still severely disadvantaged according to social indicators such as detention rates, homelessness, unemployment, health, life expectancy, alcohol and substance abuse, domestic violence, discrimination and exploitation (University of Minnesota 2003).

This chapter interrogates these issues in the Australian indigenous setting focussing on interconnections between cultural diversity, heritage and human rights. The first section addresses the terminology. The second provides a brief comparative background on British settler societies. The international human rights context for Indigenous peoples is then charted, before the discussion moves to the Australian experience, especially since the 1970s. Finally, it examines Australia’s response to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007. Arguably, the change of national government in Australia in November 2007 ushered in a period of qualitatively different relations between Indigenous and non-Indigenous Australians.

Defining indigeneity

Multiple descriptors (Indigenous ‘people’, ‘peoples’, ‘populations’ and ‘First Nations’) evoke different responses, including government fears of secession and ‘nations within’. Confusion exists about who can legitimately claim indigeneity, who is accepted, and who can speak for whom. While there is no single definition, there are particular criteria by which Indigenous peoples are identified. The International Labour Organization (ILO) Convention no. 169 considers people as Indigenous either because they are descendants of those who inhabited the area before colonization or have maintained their
own social, economic, cultural and political institutions since colonization and the establishment of new states (IWGIA 2008).

In the Martinéz-Cobo Report to the UN Sub-Commission on the Prevention of Discrimination of Minorities (1986), Indigenous communities, peoples and nations are identified as those which

having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

(IWGIA 2008; Fletcher 1999: 337)

This is the generally accepted ‘working definition’ of Indigenous peoples. Self-identification and acceptance by the group are crucial, as in the ILO Convention.

Another approach by Erica-Irene Daes, Chairperson, UN Working Group on Indigenous Populations, is also widely used. Daes identifies peoples as Indigenous:

1 because they are descendants of groups already in the country when other ethnic or cultural groups arrived there;
2 because of their isolation from other segments of the population, they have preserved almost intact the customs and traditions of their ancestors; and
3 because they are, even if only formally, placed under a state structure which incorporates national, social and cultural characteristics alien to theirs (IWGIA 2008).

Indigenous peoples share a history of injustice where colonization has removed their dignity, identity and fundamental rights to self-determination. According to Augie Fleras:

Indigeneity, as principle and practice, is concerned ultimately with restructuring the contractual basis of indigenous-State relations. It moves away from the colonization of the past towards recognition of First Peoples as distinct societies whose collective and inherent rights to jurisdictional self-determination over land, identity and political voice have never been extinguished but serve as grounds for entitlement and engagement with the state. The politicization of this indigeneity is inextricably linked with its manifestation in indigenous ethno-politics.

(Fleras 1999: 192)
This chapter adopts the meaning of indigeneity as discourse and in its recently politicized form.

**Indigenous peoples in British settler societies**

There are 350 to 500 million Indigenous individuals worldwide, divided into 5,000 peoples, constituting 80 per cent of the world’s cultural and biological diversity, and occupying 20 per cent of its land (University of Minnesota 2003). Australia, Canada and New Zealand all have histories of migration superimposed on pre-existing Indigenous populations which share the experience of ‘subjugation, marginalization, dispossession, exclusion and discrimination by the dominant society’ (Havemann 1999a: 5–6). Early British settlers were relatively homogeneous compared with the cultural diversity of those displaced. Nation building was based on racism and capitalism, contrasting with traditional Indigenous subsistence practices of sustainability and close spiritual relationships with the land.

Australian Aborigines and Torres Strait Islanders represent 500 communities, speak 170 languages and have their own flags. They number approximately 450,000, 2 per cent of Australia’s population of 20 million (ABS 2006). Inuit, Indian and Métis are recognized as First Nations in Canada. Ten language groups and 40 tribes exist, comprising some 1.3 million people, 4.4 per cent of the population (Statistics Canada, Aboriginal Peoples of Canada 2001). In New Zealand, English and Māori share official language status. Māori number approximately 500,000, 15 per cent of New Zealand’s population, with 40 distinct tribal groups (Havemann 1999a: 2–6; Statistics New Zealand 2006). Although these Indigenous populations are increasing faster than non-Indigenous, they remain greatly outnumbered.

Factors affecting race relations and human rights in settler societies include the density, distribution and comparative isolation of Indigenous peoples; their leadership structures and degree of diversity; the timing and nature of European settlement; the imposition of Western notions of citizenship and sovereignty; the ability of traditional societies to resist or adapt; the influence of Christian missionaries; the existence of treaties; and the effects of ‘dispersion’, segregation, ‘protection’ and assimilation. In all three countries, Indigenous populations were reduced to dispossessed and underprivileged minorities by the late nineteenth century (Fisher 1980).

Since the 1970s, multiculturalism has underpinned public policy in Australia and Canada, whereas bi-culturalism prevails in New Zealand (Havemann 1999a: 10). This difference in the management of cultural diversity partly explains the less disadvantaged position of Māori compared with Australian Aborigines and Canadian Indians. Nonetheless, all three societies have a history of imposing monoculturalism through assimilation, marginalizing Indigenous peoples based on the ideology of scientific racism. From an Indigenous perspective, this is tantamount to cultural genocide.
Only recently has cultural diversity been managed by enabling limited self-determination and recognizing some ‘way of life’ and cultural rights (Havemann 1999c: 331).

**International human rights and Indigenous peoples**

Indigenous peoples’ rights in international law have changed markedly over time. Since the 1970s, the emphasis has shifted from assimilation to greater recognition of their right to remain separate with their own distinctive identities. This shift is particularly relevant to the theme of this chapter, which argues that Indigenous peoples have special rights, over and above cultural minorities within nations in general. How has this evolution in international human rights law affected British settler societies, especially Australia? While these societies have many similarities, they also display differences affecting the manner and extent to which international developments are locally incorporated.

Traditionally, only states could be subjects of international law. By the nineteenth century, customs of natural law recognizing Indigenous peoples as deserving of rights were replaced by state-made laws, reducing their legal status. The principle of *terra nullius* held that Indigenous peoples had no land tenure or land law at the time of British settlement and consequently the Crown could claim sovereignty. ‘Protection’ policies aimed to assimilate Indigenous peoples who had no international legal status until the mid-twentieth century (Tickner 2001: 4). Human rights law gradually evolved, however, allowing Indigenous peoples at least to become objects of international concern, initially for their protection and later to promote self-determination. Awareness of their living conditions spread and international standards provided them with moral support to fight for their rights (Havemann 1999b: 183–4; Iorns Magallanes 1999: 236–7; Fletcher 1999: 339).

The UN *Universal Declaration of Human Rights* (1948) was the first international instrument to assert that all people were equal in dignity and rights (Article 1), irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2). The *Convention on the Prevention and Punishment of the Crime of Genocide* (1951) followed, defining genocide as acts intended to destroy, totally or partially, a national, racial or religious group, including the forcible transfer of children of one group to another. The first international agency to address Indigenous issues specifically was the ILO. In 1957 it adopted Convention No. 107 and Recommendation No. 104 ‘Concerning the Protection of Indigenous Populations within Independent Countries’. This reaffirmed that Indigenous peoples had different rights and needs from other minorities, but contained no guarantee that they could remain culturally distinct (Iorns Magallanes 1999: 237–8).
Human rights laws protecting minorities and individuals against discrimination within states were extended in the UN Declaration (1963) and International Convention (1965) on the Elimination of all Forms of Racial Discrimination (ICERD). The ICERD, signed in 1966 by Canada, New Zealand and Australia and ratified in 1970, 1972 and 1975 respectively, had significant domestic ramifications (Iorns Magallanes 1999: 238). Article 1 defines racial discrimination as ‘any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life’ (ICERD).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were adopted in 1966. The latter recognized the right to self-determination, becoming the ‘charter’ for post-imperial decolonization. Both protect individual and collective rights, the ICCPR specifically mentioning intangible cultural heritage. Ratified by Canada in 1976, New Zealand in 1978 and Australia in 1980, the ICCPR has affected domestic policies in all three nations, particularly the frequent use by Indigenous peoples of Article 27:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

(ICCPR)

Initially, states interpreted this as meaning not to undermine minority cultures but it now implies an obligation to support them (Iorns Magallanes 1999: 238). Although formally, the right to self-determination had no domestic applications, it became a means to assert indigeneity within these states. All ratified the Optional Protocol of the ICCPR allowing individual complaints against governments for breaches of the Covenant and the ICERD, important in Australia which has no Bill of Rights (Tickner 2001: 302).

The 1970s brought greater awareness of the legitimacy of Indigenous rights. This arose largely from Indigenous peoples themselves taking their concerns to the international arena which then influenced domestic laws. It was increasingly accepted that they be considered as distinct peoples rather than minorities, and legitimate objects of international law with clearly defined rights. Acknowledgement that they should participate in making decisions that affected them led to the establishment of a permanent UN forum (Iorns Magallanes 1999: 238–9). In 1972 a special Rapporteur was appointed on discrimination against Indigenous peoples and subsequent
reports indicate that they were of separate international concern. The International Court of Justice in the 1975 Western Sahara case found that, under the laws of decolonization, Indigenous peoples were entitled to self-determination and the application of terra nullius was no longer appropriate (Havemann 1999b: 184). This indicated that they were being considered not only as legitimate objects of international law but also as subjects (Iorns Magallanes 1999: 239). It was not until the 1992 Mabo Judgment that the Australian High Court rejected terra nullius in the same way.

The establishment of the Working Group on Indigenous Populations (WGIP) by the UN Human Rights Commission in 1982 was particularly significant. States rejected the word ‘peoples’ (in favour of ‘populations’) fearing that it implied the right to self-determination. The Group’s mandate was to review the situation of Indigenous peoples and draft guidelines for their protection. A Draft Declaration was prepared between 1985 and 1993, the objective being to present it to the General Assembly by 2004, the last year of the International Decade for the World’s Indigenous Peoples. Wide consultation occurred and annual meetings became important platforms for Indigenous participation. States began to reject assimilation and accept the rights of Indigenous peoples to their separate culture and identity (Havemann 1999b: 185; Iorns Magallanes 1999: 239–40; Tickner 2001: 302–5).

Although these attitudinal shifts were reflected in international human rights instruments, the only legally binding document, the 1957 ILO Convention No. 107, remained assimilationist. Influenced by the WGIP, the ILO replaced Convention No. 107 with Convention No. 169 in 1989, recognizing Indigenous peoples’ aspirations to cultural preservation and self-determination. Indigenous representatives, however, considered it had not gone far enough, giving Canada, Australia and New Zealand a convenient reason not to ratify or feel legally bound by it (Iorns Magallanes 1999: 240–1).

Nonetheless, Convention No. 169 confirmed international commitment to Indigenous cultural self-determination, participation in decision-making and rights to traditional lands. It facilitated further discussion of the Draft Declaration establishing a minimum set of rights on which it could build. The final version was submitted by the sub-Commission to its parent body, the Commission on Human Rights, in 1994. The Commission, however, failed to approve it owing to state concerns about the self-determination provisions and established its own Working Group on the Draft Declaration on the Rights of Indigenous Peoples (Iorns Magallanes 1999: 241–2; DUNDRIP 1994). This met annually in Geneva for another decade. Indigenous representatives from the settler societies consistently argued for a strong Declaration including ‘the right of self determination’ as stated in Article 1 of the International Covenants. Government representatives, however, opposed this as it could imply the right of secession. Australia later altered its view when it was accepted that secession was an unlikely outcome (Iorns Magallanes 1999: 242).
The work of the Human Rights Committee, which monitors compliance with the ICCPR, was particularly relevant for settler societies, making the following reaffirming recommendation in 1994:

Culture manifests itself in many forms, including a particular way of life associated with the use of land and resources, especially in the case of Indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of these rights may require positive legal measures of protection to ensure the effective participation of members of minority communities and decisions which affect them.

(Iorns Magallanes 1999: 243)

Meanwhile a UN Permanent Forum on Indigenous Issues was being considered, established in 2000 with eight Indigenous members. It was the first international UN body to have Indigenous representation and provided advice and recommendations to the Council. In 2001, a special Rapporteur on human rights and freedoms of Indigenous peoples was appointed (University of Minnesota 2003).

The Declaration on the Rights of Indigenous Peoples was finally adopted by the Human Rights Council on 29 June 2006, referred to the General Assembly and accepted by the UN on 13 September 2007. However, the three British-based settler societies (along with the United States) voted against it. Despite this rejection, these same societies have generally supported the concept of human rights as they have evolved internationally. All ratified the ICERD, the ICCPR and the Optional Protocol and use similar methods of incorporating them domestically. Although local practices vary, they are aware of their obligations. All have rejected assimilation and accepted a degree of self-determination (Iorns Magallanes 1999: 244–5, 264; Havemann 1999b: 185).

Australia

Historically, Australia’s relations with its Indigenous peoples were based on the denial of citizenship, land rights and cultural heritage. Colonization meant dispossession with scant recognition of international human rights. Aborigines became state wards, confined to reserves and missions. Until the 1960s, assimilation underpinned Australian nationhood, exemplified by the white Australia policy. In 1951, as post-war immigration gathered momentum, assimilation was also adopted as official policy for Aborigines (Fletcher 1999: 341); unofficially it had existed for decades. Cultural integration was seen as the solution for non-British migrants and Aborigines alike. The consequences, however, were devastating. According to Michael (Mick) Dodson, human rights activist and member of the Yawuru peoples from the southern Kimberley region, Western Australia:
Assimilation was and is a massive abuse of human rights ... human rights had no application to indigenous Australians in 1951 unless they were fully assimilated into the dominant culture. Despite the existence of international human rights instruments, indigenous rights did not inherently accrue to Aboriginal people but were, instead, a reward if they would renounce their Aboriginality and embrace the dominant status quo. It was equality based, not on respect for racial difference, but on the denial of your race.

(cited in Fletcher 1999: 342)

While the aim was partly to improve living conditions, assimilation also arose from government efforts to eliminate Aborigines as a distinctively different element in white Australia. As Christine Fletcher argues, governments collaborated in situating Aborigines ‘in a cultural vacuum’ (missions, welfare organizations and reserves), re-educating them as British (Fletcher 1999: 342). Until the 1960s, states and territories had different laws and practices. Although Canada took over Indian affairs in 1867, and New Zealand assumed power over Māori affairs in 1852, no coordinated central power over Aborigines existed in Australia until 1967. Nonetheless, similar racist practices developed across the country (Havemann 1999c: 331).

In contrast to Canada and New Zealand, the Australian constitution does not mention human rights. With federation, the Commonwealth gained specific powers, all other powers remaining with the states. When the Commonwealth legislates ‘with respect to’ one of its powers, it overrides state legislation (Iorns Magallanes 1999: 245–6). Aborigines only appeared in the Constitution in ss.127 and 51 (xxvi), the first excluding them from the national census, the second preventing the Commonwealth from making laws concerning them. It was not until the 1967 Constitutional Referendum that s.127 was removed and s.51 altered (Fletcher 1999: 340).

With its overwhelming ‘yes’ vote, the 1967 Referendum was a watershed in the cultural and political freedoms of Aboriginal people, providing opportunities for change (Fletcher 1999: 335–6). Many individuals and organizations influenced this outcome, particularly the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (Taffe 2005; Tickner 2001: 5, 8–9). On Australia Day 1972, a ‘tent embassy’ was erected outside old Parliament House, Canberra, flying the Aboriginal flag, a symbol of sovereignty reflecting the growing unity of Indigenous Australians in the struggle for their rights (Tickner 2001: 11; Wells 2000: 212). Multiculturalism became official policy in 1973 followed by the 1975 Racial Discrimination Act (RDA), signalling the end of legal discrimination on the basis of race. The RDA established a ‘non-negotiable foundation of human rights protection’, giving effect to the ICERD. Without it, the Mabo decision might never have happened since it requires that Aboriginal and non-Aboriginal land rights are treated equally (Tickner 2001: 16, 83, 85).
The Indigenous population has since grown substantially, their leaders and spokespeople increasingly acknowledged. Living standards have improved but are still well below those of other Australians. There is no constitutional recognition of Aboriginal rights as First Peoples, so reforms of one government can be revoked by the next (Fletcher 1999: 341, 347–8). Australian states and territories have passed equal opportunity and anti-discrimination laws benefiting all, but Aborigines have relied primarily on the Commonwealth for justice (Tickner 2001: 5). Under its external affairs power, the Commonwealth has used international human rights law to gain recognition of specifically Aboriginal rights and enacted legislation particularly for Indigenous peoples, despite state opposition (Iorns Magallanes 1999: 246; Fletcher 1999: 340).

In the 1970s support grew for equal access to social services and limited self-determination for Indigenous communities (Markus 2001: 21). Self-determination was predicated on principles for decolonization identified by the UN, ‘that all people have the right to cultural freedom, to exercise choice over their own lives and to be free from coercion’. This is reflected in Article 1 of the ICCPR: ‘All people have the right to self-determination. By virtue of the right, they freely determine their political status and freely pursue their economic, social and cultural developments’. In Australia, self-determination implies solidarity, empowerment and enhanced life chances; its broader international connotation of self-governing autonomy is rejected (Fletcher 1999: 342–3). Nonetheless, increased recognition of Indigenous aspirations led to the first Aboriginal Land Rights (NT) legislation, initiated under the Whitlam government and enacted in 1976. The administration of Aboriginal affairs was reorganized under Whitlam who established the Commonwealth Department of Aboriginal Affairs in 1972; the House of Representatives Standing Committee on Aboriginal Affairs and National Aboriginal Consultative Committee in 1973; and the Aboriginal Land Fund Commission in 1975 (Fletcher 1999: 343–4; Tickner 2001: 13, 14, 27; Markus 2001: 22).

The Hawke and Keating Labor governments, 1983 to 1996, promoted social justice (Fletcher 1999: 336). The Community Development Employment Project, begun in 1977 under the Fraser government to provide work in remote communities, was expanded under Hawke (Tickner 2001: 18). Bob Hawke was committed to commercial land acquisition for dispossessed Aborigines and enhancing their rights, particularly to veto mining on their lands. Apart from South Australia, state governments failed to legislate adequately in this area. Clyde Holding, Minister of Aboriginal Affairs, enacted the first Commonwealth Aboriginal and Torres Strait Islander Heritage legislation in 1986. Uluru and Kata Tjuta, spectacular landscapes excised from Aboriginal reserves and incorporated into a national park, were returned to Aboriginal ownership in 1985 with future lease-back and joint management arrangements (Tickner 2001: 21–4).
Indigenous cultural heritage is intertwined with spirituality and place. Often it is secret, sacred and gender specific. Several conflicts between this largely intangible, mystical culture and industrial and commercial interests have led to misunderstandings and double standards, exemplified by the Hindmarsh Island Bridge case in South Australia (Tickner 2001: Ch.13). When, in the face of disagreement amongst local Indigenous women, the 1995 Hindmarsh Island Bridge Royal Commission found that Ngarrindjeri women’s beliefs were fabricated, Dodson responded vehemently:

The right to religious freedom and respect for spiritual beliefs lies at the heart of human rights. It is a right which all Australians are obliged to respect, and all Australians entitled to enjoy. And that principle holds irrespective of whose beliefs are at issue, or on what basis those beliefs are held. What we have in this Royal Commission is the abuse of human rights of Aboriginal people masquerading as a lofty legal procedure. (cited in Tickner 2001: 283)

On Australia Day, 1988, most Australians celebrated 200 years of European settlement while Aborigines protested with the slogan ‘White Australia has a black history’. In June, Hawke was presented with the historic Barunga Statement requesting government support for an International Declaration of Principles for Indigenous Rights. In response, Hawke promised a treaty. While treaties exist elsewhere, in Australia there was concern that this would divide the nation. The idea was repeatedly raised but never seriously entertained by later governments (Tickner 2001: 25–6, 40–2; Markus 2001: 87).

Hawke responded actively to the Royal Commission into Aboriginal Deaths in Custody (RCADIC), appointing Dodson as Australia’s first Aboriginal and Torres Strait Islander Social Justice Commissioner. He strengthened the capacity of the Human Rights and Equal Opportunity Commission (HREOC) to inform Indigenous communities about their rights and improved mechanisms for handling complaints under the first Optional Protocol to the ICCPR (Tickner 2001: ix, Ch.4). These measures had little impact on the disadvantage underlying deaths in custody, a situation exacerbated in the 1990s by Western Australia’s juvenile justice legislation and the NT’s mandatory sentencing which contravened the recommendations of the RCADIC and violated the Convention of the Rights of the Child and the ICCPR (Tickner 2001: 79–80, 306; Markus 2001: 110–11; Wells 2000: 215).

In a clear move towards self-determination and in line with international developments in Indigenous human rights, Hawke created the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1989, through which Indigenous Australians could participate in government processes affecting their lives. ATSIC had a distinctive structure for managing cultural difference through joint accountability (Havemann 1999c: 332) and was politi-
Indigenous peoples are not multicultural minorities’ 145

cally very significant (Tickner 2001: 49). It was to be the voice of Indigenous
peoples: promoting self-determination by formulating, implementing and
monitoring programmes; advising the Minister; developing policy; assisting
and cooperating with communities; improving social conditions; protecting
cultural material; conducting research; and empowering Aborigines through
devolution and self-management (Fleras 1999: 216; Markus 2001: 36). It
was given considerable resources and autonomy.

Throughout the 1990s, Australians were engaged in a national debate
about their history, ‘the history wars’ (Macintyre and Clark 2003), especially
the relationship between Indigenous Australians and European colonizers.
The Hawke and Keating governments established a reconciliation process
urging public acknowledgement of the legacy of invasion, dispossession and
Council was formed in 1991. For Robert Tickner, Minister in the Indigen-
ous affairs portfolio, 1990–1996, its objectives were threefold: to educate
non-Indigenous Australians about Indigenous history and culture and the
need to address Indigenous disadvantage and human rights; to produce a
formal document or agreement; and to actively address Indigenous aspira-
tions, human rights and social justice. Tickner argued that advancing these
objectives was a precondition of any celebration of Australian nationhood in
2001 (Tickner 2001: 29, 33, 45, 47). On 27 May 1992, the 25th anniver-
sary of the 1967 referendum, parliament passed a motion supporting recon-
ciliation and the government’s response to RCADIC, including the principle
of self-determination (Tickner 2001: 42). Paul Keating’s landmark Redfern
speech on 10 December 1992 was a public acknowledgement by the Prime
Minister of Aboriginal human rights abuses, delivered at the Australian
launch of the UN International Year of the World’s Indigenous People in
1993:

If we can build a prosperous and remarkably harmonious multicultural
society in Australia, surely we can find just solutions to the problems
which beset the first Australians – the people to whom the most injus-
tice has been done … the starting point might be to recognise that the
problem starts with us non-Aboriginal Australians. It begins, I think,
with the act of recognition. Recognition that it was we who did the dis-
possessing. We took the traditional lands and smashed the traditional
way of life. We brought the disasters. The alcohol. We committed the
murders. We took the children from their mothers. We practised dis-

(cited in Fletcher 1999: 336; Tickner 2001: 95; Markus 2001: 37)

Prominent conservatives, including Tim Fischer, National Party leader, John
Stone, ex-National Party senator, and Hugh Morgan, Western Mining’s
Chief Executive Officer, publicly opposed Keating’s stance (Tickner 2001:
97–9, 107–8; Markus 2001: Chs 3–4). John Howard, leader of the Liberal–National Party Coalition, rejected the notion that Australia had a racist past and denounced the ‘black armband version’ of Australia’s history (Reynolds 1999: 129). In 1996, Howard proclaimed:

I sympathise fundamentally with Australians who are insulted when they are told that we have a racist bigoted past. . . . Now, of course, we treated Aborigines very, very badly in the past . . . but to tell children whose parents were no part of that maltreatment . . . who themselves have been no part of it, that we’re all a part of a, sort of, racist bigoted history, is something that Australians reject.

(cited in Fletcher 1999: 336; Markus 2001: 86)

Henry Reynolds (1999: 129) identifies the Mabo judgment as the main cause of the ‘history wars’. Similarly Augie Fleras (1999: 213) describes Mabo as a ‘defining moment’ in Aboriginal ethno-politics. After wide consultation with Indigenous representatives and much political wrangling with state and Territory governments and the mining industry, the Keating government passed the 1993 Native Title Act, acknowledging Aboriginal title as common law where not explicitly extinguished by crown or law (Tickner 2001: Chs 7 and 8). In 1995, a Land Fund was established for the 95 per cent of Indigenous Australians unable to prove possession of, or continuous connection with land (Reynolds 1999: 129–39; Fleras 1999: 213; Tickner 2001: Ch.11; Markus 2001: 39). Other policy responses to Mabo followed, promoting fairness, equality and better access to government systems. The 1996 High Court Wik decision determined that native title could coexist with existing pastoral leases where previously it was extinguished (Tickner 2001: Chs 7 and 8; Markus 2001: 42). In response, Howard released his 10-Point Plan, arguing: ‘The fact is that the Wik decision pushed the pendulum too far in the Aboriginal direction. The 10-point plan will return the pendulum to the centre’ (Australian Politics.com). Tickner considered this a new attack on Indigenous human rights (Tickner 2001: 308).

Fleras (1999: 215–16) argues that Aboriginal ethno-politics have been relatively successful because Indigenous rights have been presented as human rights and Aboriginal socio-economic disadvantage linked with a national crisis requiring immediate attention. He attributes this to Indigenous activism that rejects inclusion in a multicultural society, favouring a conception of Aborigines as nations distinct from other Australians; the treatment of Aborigines in custody; international embarrassment over images of disposessed Aborigines; and increasing awareness of past discrimination.

Such activism is exemplified in the push since the late 1980s, albeit unsuccessful, by Torres Strait Islanders for greater independence (Tickner 2001: Ch.12). While the Queensland and Commonwealth governments opposed this, Hawke established an Interdepartmental Committee to consider Torres Strait Islander grievances: loss of control over their future, disadvantage, and disregard for their cultural identity. In April 1993, an Island Coordinating Council document argued for self-determination by 2001:

> Many Australians do not understand that Indigenous autonomy is a recognized world standard for public policy. Indigenous peoples are not simply another group to be assimilated. Rather we are distinct cultures with a will to survive and thrive on our traditional territories. There is irony in the fact that in order to participate fully in the opportunities and life of Australia, we need more autonomy and self-government.... Our purpose is not to import or copy a foreign model but to recognise that practical models exist and that the dangers in Indigenous autonomy and self-government feared by some Australians have not occurred elsewhere.

(Tickner 2001: 243–4)

Despite the establishment of the Torres Strait Regional Authority in 1994 and existing local models in Norfolk, Christmas and Cocos-Keeling Islands, Australian governments have rejected devolution of power to Torres Strait Islanders. (Tickner 2001: 248).

Overall, the Hawke–Keating Labor governments effected considerable change in the relationship with Indigenous Australians, enhancing their human rights protection, initiating a path to reconciliation, and launching the HREOC Enquiry into the ‘stolen generations’ in 1995 (Havemann 1999c: 332). In 1996, however, Labor lost power to the Liberal–National Coalition. Ambivalent towards Labor’s Indigenous affairs policies, the Coalition withdrew its support, ignoring international human rights trends and confining Indigenous Australians to the status of other minorities within its multicultural society. It failed to follow the social justice agenda of the Reconciliation Council and abandoned Labor’s third-stage response to the Native Title Act. It ignored Indigenous claims for differentiated citizenship, replacing the term ‘self-determination’ with ‘self-management’ or ‘self-

The Howard government drastically reduced ATSIC’s funding and autonomy, and community programmes were adversely affected by pressure for improved accountability. The Coalition was sceptical about Indigenous demands for inherent and collective rights with the Minister increasingly seen as indifferent. Indigenous participation in self-governance declined owing to increasing racial intolerance and impatience with political correctness (Fletcher 1999: 347). Pauline Hanson, leader of the ultra-conservative One Nation Party, promised to abolish special Indigenous rights during the 1996 election campaign. Her emphasis on equal rights for all, supported by Howard, alienated Indigenous Australians (Fleras 1999: 217; Markus 2001: 156, 193–4). Concern over the implications of Mabo and Wik, particularly any suggestion of an Aboriginal state, led to a steady erosion of post-Mabo Native Title Act rights. The pace of reconciliation was slow and Australia celebrated the centenary of federation with little progress, despite thousands of Australians symbolically walking over bridges the previous year. On 1 January 2001, the Council for Aboriginal Reconciliation ceased to exist (Tickner 2001: x; Markus 2001: 112).

While ATSIC promised much in terms of social justice, it was increasingly engulfed in scandal and litigation. Success was compromised by self-management policies which duplicated state and regional structures; lack of accountability; and charges of favouritism and paternalism. Howard established the Aboriginal and Torres Strait Islander Services (ATSIS) and during the 2004 election campaign, announced plans to restructure Indigenous affairs and abolish ATSIC. Contrary to recommendations of a government review in 2002, ATSIC was formally abolished on 24 March 2005 (Pratt and Bennett: 2004–2005).

Fleras (1999: 218) argues that Australian ethno-political battles post-Mabo included a commitment to self-sufficiency and cultural survival within the context of self-determination. A comparison across the settler dominions led him to identify certain themes. Above all, he emphasizes that ‘indigenous peoples are not multicultural minorities’. Their concerns are not those of newcomers, striving for equality and an end to discrimination within existing structures of host societies. Rather, as descendants of the original inhabitants, their inherent and collective rights to self-determination have never been extinguished and await reactivation as the basis for negotiating a new relationship with the state. Their claims transcend the socio-cultural concerns
of immigrants and refugees. Unlike other minorities, they have a special relationship with the state and collective entitlements that flow from that relationship. They see themselves as ‘peoples’ or ‘nations within’ as described at the outset of this chapter, and their task as decolonization, demarginalization and self-determination (Fleras 1999: 196, 219–20).

Fleras’s argument highlights the delicate balance in settler societies between preserving the heritage of different cultural groups, managing their diversity, and recognizing Indigenous rights. Indigenous Australians clearly distinguish themselves from other minorities. Their inherent rights are essentially about self-determination, not necessarily confined to existing political frameworks. As Dodson explains:

Policy makers must accept that indigenous people are not a special category of disadvantaged souls who require attention or even caring or gentleness. We are peoples with rights and imperatives of our own. Our principal right is to make the decisions that direct our present and our future.

(cited in Fleras 1999: 196)

Settler nations manage their cultural diversity by encouraging minorities to coexist with a shared set of responsibilities and core values. They oppose the Indigenous agenda of self-determination for fear of threatening national integrity. They reject the idea of differentiated citizenship, preferring universal individual rights to the shared sovereignty and collective rights to which Indigenous peoples aspire. Their responses to international laws and conventions are strongly influenced by these prevailing views.

**Conclusion**

Despite gains in recent decades and the reconciliation agenda, little progress has been made in Australia on Indigenous human rights and disadvantage. Arguably, Australia has breached its obligations under the CERD, ICCPR, ICESCR, the Convention against Torture, and the Convention on the Rights of the Child (Tickner 2001: 308–10). A critical issue since the establishment of the WGIP has been how far nations are prepared to accept the concept of self-determination. Increasingly contested in international law, this concept is one which Indigenous people consider central to the Universal Declaration of the Rights of Indigenous Peoples (Fleras 1999: 221–2; Tickner 2001: 306). The settler societies, however, are simply not endorsing it. At the UN General Assembly in September 2007, 144 nations voted for the Declaration, 11 abstained and only four voted against – the United States, Canada, New Zealand and Australia. In a public lecture in October 2007, Mick Dodson, by then Professor and Director of the Australian National University’s Centre for Indigenous Studies, referred to the result as an amazing international consensus.
Settler societies are therefore clearly out of step, as in their non-ratification of other UN instruments such as the *Conventions for the Safeguarding of the Intangible Cultural Heritage* (2003), and *Protection and Promotion of the Diversity of Cultural Expressions* (2005). Admittedly, they are the nations most affected. Yet Dodson (2007) emphasized that the Declaration represents minimum standards for the treatment of Indigenous peoples. ‘This is the floor not the ceiling.’ Like other international instruments, it is ‘not legally binding but aspirational, a call to good behaviour’, replete with words such as ‘consultation’, ‘cooperation’ and ‘partnerships’. Somewhat sarcastically, Dodson outlined Australia’s stated objections, quoting Mal Brough, then Minister for Indigenous Affairs, who justified Australia’s position as follows: ‘It’s not fair. It refers to specific groups and not others. It’s outside what we Australians believe to be fair. We did this because of Australia’s interest. We are all one under the national flag.’ Dodson argues that the government feared the Declaration would again raise questions of compensation. Australia’s objections relate specifically to Articles 25, 26 and 27, all of which concern the rights of Indigenous peoples to lands, territories, waters and other resources they have traditionally owned, occupied, used or acquired. Ironically, Australia was a leader in supporting the Draft Declaration for over two decades. Australian representatives were fully engaged in the deliberations of the WGIP with numerous opportunities to shape its final form. For over a decade, Dodson himself participated in its drafting. ‘It is not as if there had been no chance to ensure that it was fair’ (Dodson 2007).

More recent developments may influence future relations between Indigenous and non-Indigenous Australians. The first was the Howard government’s emergency response to the NT Report ‘Little Children are Sacred’ on child sexual abuse (NT Government 2007). Legislation in August 2007 allowed comprehensive, compulsory intervention in 73 NT Aboriginal communities. This occurred with little consultation with the NT government or Indigenous leaders, disregarding the importance of Aboriginal input into decisions affecting their lives (Brennan 2007: 1). It is an issue which continued to be controversial under Kevin Rudd’s Labor government which maintained the intervention.

The second was the first ever Indigenous opening of parliament under the new Rudd government on 13 February 2008 and the historic apology by the Prime Minister to the ‘stolen generations’ as his first parliamentary act (ABC 2008). Then on 3 April 2009, 16 months after taking power, Rudd acted upon Labor’s election promise to endorse the UN *Declaration on the Rights of Indigenous Peoples*. Indigenous Affairs Minister Jenny Macklin declared this was an important symbolic step for building trust and ‘resetting’ black and white relations in Australia but she hastened to emphasize that it did not bestow any additional rights on Aboriginal Australians (*The Age*, 26 March, 3 April 2009). While these were long overdue positive gestures, they only partly address ongoing Indigenous aspirations for special rights and self-determination.
‘Indigenous peoples are not multicultural minorities’  151

References

(The) Age, 26 March, 3 April 2009.


All websites accessed 23 March 2008.