

**Title**

**Indigenous Self-determination:  
Rhetoric or Reality?**

**By**

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BA (Hons)**

**Submitted in fulfilment of the requirements for the  
Degree of Master of Arts  
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## **Statement**

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of my knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of this thesis.

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## **Abstract**

This thesis is written with a view to incorporating Aboriginal oral history processes which insist upon beginning at the beginning: at the birth of the concept of self-determination. The thesis then traces the growing of international awareness of human rights beginning with the powerful emergence of notions of the Rights of Man in 1789, pausing briefly to outline the effects of those notions in relation to the European revolutions, moving forward to the effects of self-determination on the world during the two World Wars, touching upon the Versailles Conference (1919) and the impact of the conference on international understanding of self-determination and its potential implementation at that time in history. The thesis then takes an aside into the emergence of an international discourse on the definition of self-determination, including the United Nations attempts to support the growth of self-determination for all peoples and culminating in the end of colonialism and the eventual resulting realisation that Indigenous peoples' also have a right to claim self-determination. A section of the thesis highlights the empowerment of Indigenous peoples to outline their own distinctive self-determination aspirations resulting in the formulation and international acceptance of the Declaration of the Rights of Indigenous Peoples. The final chapters of the thesis focus on the aspirations of Aboriginal Australians, Australian government responses to those aspirations and the degree of difficulty Australian Aborigines (inclusive of Torres Strait Islanders) face in their respective attempts to maintain sovereignty and self-determination rights in view of government mechanisms which have proven to be consistently racist, xenophobic and dismissive of Aboriginal rights and aspirations. Finally, a brief comparison is made of Indigenous self-determination achievements in Canada, the USA and New Zealand as a means to highlight the unnecessary denial of Aboriginal rights in Australia. Posing the question that if other nations can afford inalienable Indigenous rights it must be asked why Australia consistently fails to achieve similar advances in ensuring the human rights of Australian Aborigines. In effect, this thesis argues that government support of Indigenous self-determination in Australia is largely rhetorical.

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thank you Jeanette James.

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## **Literature Review**

The range and variety of resource material required for the subject matter of this thesis proved to be extensive and multidisciplinary.

The major documents, articles and publications include:

Ronen's *The Quest for Self Determination (1979)*. This publication provided a valuable perspective on the development of the concept of self-determination. Of particular interest is Ronen's discussion regarding self-determination as an individual, rather than a group, aim. The somewhat recent theory of self-determination (SDT) offers an explanation of how individual and group self-determination are interdependent and, consequently, contributes to a more comprehensive understanding of the definition of self-determination. Ronen also proffers historical perspectives which serve to situate the emerging notion of self-determination as linked to the Rights of Man in 1789 and, consequently, provides further insight into the development of the concept of self-determination. Supplementary to this the resource includes a discussion on the implications of self-determination for the modern state and international law which aided my understanding of the complexity of implementation of self-determination. Ronen essentially viewed ethnic quests for self-determination in a relatively negative light. His view, quintessentially, is that ethnic minority quests for self-

determination manifest as a potential threat to national/state cohesion, by virtue of secession.

Lapidoth, R. (*Autonomy: Flexible Solutions to Ethnic Conflicts, 1997*) supports this viewpoint and also views secession as a negative outcome: there is general consensus between the writers that any process which undermines the state is a negative process. Secession, however, need not be a natural step in self-determination claims: as secession may not, necessarily, be an integral facet of self-determination as a concept. Lapidoth also provides further historical information with the added benefit to this thesis, and, in particular, the chapter relating to definitions, of a discussion relating to the differences between ethnic and Indigenous minority group claims which assisted in further defining the concept of self-determination. Lapidoth's key point, however, is autonomy and its' relationship to self-determination. While acknowledging that not all claims to self-determination require autonomy as an aim, Lapidoth assesses the value of autonomy as a mechanism for achieving self-determination where relevant.

Rupert Emerson's (1964) discussion in *Self-Determination Revisited in the Era of Decolonisation*, also offers substantial insight into the historical development of self-determination. This reference provides a perspective on decolonisation and legal and ethical changes that have contributed to popular opinion and widespread acceptance of self-determination. Emerson proposes that the end of World War II was a turning point and highlights how self-determination has become accepted where once colonisation was the norm. Emerson also discusses and differentiates between the concepts of higher law and positive law, whereby positive law regulates our every day existence and higher law consists of that set of basic principles that has driven the growing understanding that every individual deserves equality.

Emerson cites changes in social acceptability on issues such as slavery and how the changing face of human acceptance of these principles have resulted in notable international changes such as the UN General assembly in 1940 declaring that subjugation of other peoples is a denial of human rights. The author draws a direct correlation between the demise of colonialism and the rise of anti-colonial sentiment coupled with support for self-determination. In doing so he provides an account of the progress of these new ideologies within the UN and the international legal ramifications.

The development of self-determination is further highlighted with assistance from Hurst Hannum's, *Autonomy, Sovereignty, and Self-determination, the Accommodation of Conflicting Rights, (1996)*. This work discusses the history of changes to the concept over time. In addition there is discussion regarding some of the difficulties that may arise as a result of geographical and territorial changes. Hannum also addresses the issue of priorities and whether the implementation of self-determination should be governed by a set of priorities such as religion, nationalism or culture and which, if any of these priorities should take precedence over other claims in situations where there may be more than one claim.

Similarly, the Van Dyke article, *Self-determination and Minority Rights, (1969)* further articulates the historical development and provides a focus on the evolution of self-determination from a principle to a right. Van Dyke also assists in outlining many of the impediments to achieving self-determination due to the diversity of claims.

International perspectives, particularly those articulated within the United Nations, are significant in any analysis of the concept of self-determination. This thesis will assess those perspectives, beginning with Caroline Fosters', *Articulating Self-determination in the Draft Declaration on the Rights of Indigenous Peoples (2001)*. In addition to providing insight into the content of the Draft Declaration, Fosters' work highlights key points relevant to differences between international legal definitions and possible Indigenous interpretations.

Pomerances' *Self Determination in Law and Practice, the New Doctrine in the United Nations, (1982)* assists in differentiating between internal and external forms of self-determination. Such definitions are important in assessing the form of claim under discussion. It becomes obvious that a simple definition of self-determination is almost impossible given the infinite potential for claims. Pomerance provides a succinct outline of some of the difficulties faced by the United Nations, nation states and potential claimants.

Two further articles of importance to the research are written by Russell Lawrence Barsh, they are, *Indigenous Peoples: An Emerging Object of International Law (1986)* and *United Nations Seminar on Indigenous Peoples and States (1989)*. The value of Barsh's first article to this research is that it identifies the draft principles set out by the Working Group on Indigenous Populations. Further, the article outlines the degree of acceptance these principles are achieving within some nations, particularly, Australia and Canada.

Barsh also provides information on definitions arrived at by the Working Party. These definitions assist in interpreting international directions and understanding many points of contention. Also of notable interest to this research are Barsh's discussions on a range of issues such as land rights, the rights of Indigenous peoples to maintain cultural and traditional customs, Indigenous participation in decision-making processes and the concerns raised by nation states that oppose acceptance of these factors as rights.

Barsh's second article reports on the *Sub-commission on Prevention of Discrimination and protection of Minorities (1987)*. This sub-commission represents the first time that Indigenous and non-government representatives were afforded equal representation along with government representatives. Barsh outlines the procedural changes that occurred at the United Nations in light of seminars set up to find solutions to self-determination issues as part of the wider issue of dealing with racism. Three basic issues relevant to this thesis include, firstly, the occurrences of Indigenous peoples being forced from a position of control to one of being a mere 'fringe element' within larger societies and secondly, historical destructive processes that undermined and destroyed subsistence and resulted in exclusion. Finally, the incidence of new forms of racism that are culturally and politically based upon the new societies imposed standards.

Christine Zuni Cruz' *Human Rights and Nationhood In The International Context, (2005)* while having some contribution to an understanding relating to various nation states and their respective approaches to Indigenous self-determination, the paper will also contribute to discussion relating to the legal dimensions of self-determination. Cruz applies international perspectives and assesses the inherent impediments to Indigenous self-determination in general, but in the USA in particular. Cruz' discussion deals with many of the issues raised by Barsh and,

consequently, adds depth to the discussion and understanding of the underlying issues, barriers and perspectives of self-determination.

In order to consolidate discussion on United Nations perspectives, the *UN General Assembly Resolution 1514*, the *Universal Declaration of Human Rights* and the *Declaration of the Rights of Indigenous Peoples*, have proven to be essential resources necessary to understanding the principles and rights, supported by the UN, and the consequent growth of self-determination as a human right as opposed to the long held notion of sovereignty.

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A resource that provides specifically Indigenous perspectives is the *International human rights day statement by the Indigenous Caucus*. This statement reiterates the call for Indigenous rights to difference, to self-determination and participation in decision-making processes, all of which form the general ideological basis in self-determination claims. In an attempt to identify and assess specific international Indigenous claims this thesis will include a range of examples.

For the purposes of this assessment *A Fair and Just Relationship, The Vision of the Canadian Royal Commission on Aboriginal Peoples, (1998)* by James Tully offers comparative value. James Tully outlines the results of the Canadian Royal Commission on Aboriginal Peoples. This resources offer substantial comparative material in relation to the priorities of self-determination claims, highlighting the variety of causes, aspirations and ideologies. *Paul Havemann's Indigenous Rights in Australia, Canada and New Zealand, (1999)*, will further contribute to the comparison and assessment of international self-determination claims.

The publication, *Indigenous Peoples, Racism and the United Nations*, (2001), edited by Martin Nakata, contributes significantly to an awareness of the United Nations and international perspectives. This text provides a selection of papers presented at the Regional meeting of Indigenous Peoples on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The meeting was hosted by ATSIC in Sydney in 2001. The publication includes papers presented at the meeting and, as such, provides insight into Indigenous aspirations in relation to self-determination.

Barkan's, *The Guilt of Nations, Restitution and Negotiating Historical Injustices*, (2000), deals with the aftermath of colonialism and the increasing incidence of restitution claims. Barkan provides international examples as well as a section specifically devoted to Aboriginal Australia. As a consequence this reference contributes to a range of issues relating to self-determination under discussion in this thesis. This publication also contributes to the moral and ethical development of international views.

Robbie Williams article, *The Senate must act to stop the erosion of Indigenous representation*, (2005), provides a perspective on the abolition of ATSIC. A major issue addressed by Williams is that of equitable process. In Williams view the degree of equity afforded Aboriginal Australians has been severely undermined by the recent abolition of ATSIC and he views it as a blatant example of how the Australian government is undermining Aboriginal self-determination. Williams raises some pertinent issues that relate strongly to the rights of Aboriginal groups to participate in decision-making processes and he also feels that the ability of Aboriginal people to achieve greater self-determination has been hampered by the recent actions of the Federal government.

In support of Williams views Miles Kemp's article, *Australia condemned for 'racist tendencies'*,(2005), discusses Australian government policies that could, arguably, be described as racist, or, at least, not supportive of Aboriginal self-determination.

Rosemary Neill's, *White Out, How Politics is Killing Black Australia*, (2002), is pivotal to this research. Neill outlines the historical and political acceptance of self-determination in Australia. The resource discusses individualised approaches to self-determination and internal self-government. It also discusses regional priorities and goals that assisted the evolution of self-determination in Australia while acknowledging internalised discriminatory practices such as punitive job shedding and the stripping of infrastructure prior to hand backs.

Neill also investigates the notion of economic independence and compares Australian programs to international programs with the resulting claim that Australian programs are, predominantly welfare based and as such provide no real path to economic independence.

This perspective is continued in Olga Havnen's, *Human Rights and Indigenous Australians, Self-determination*, (2002). Havnen argues, pointedly, that the current Australian political climate is hostile towards Aboriginal aspirations. In Havnen's view the Howard government is involved in pure rhetoric and the reality is that the current political agenda will not afford Aboriginal people any form of self-determination.

Bain Attwood's, *In the Age of Mabo, (1996)*, is an interesting interpretation of political thought of the time. The text outlines the view that Aboriginal culture and traditions may have achieved growing support and interest as a means to develop a new Australian national identity with the proposed purpose of including Aboriginal Australia as part of the nation in order to garner international approval. What may be significant in respect of this research project are the perspectives relating to how the Australian national identity is perceived and to what extent the adoption, or acceptance, of Aboriginal traditions contributes to actual self-determination for Aboriginal people within Australia.

An assessment of the existence, or progression, of Aboriginal self-determination in Australia must include government policy. This thesis will address issues related to abolition of ATSIC and the programs implemented since its demise. There will also be discussion on the issue of welfare dependency. In Noel Pearson's view welfare dependency has undermined individual autonomy, *Indigenous Rights (1999)*. The current debate regarding the impact of welfare dependency and its impact on Aboriginal self-determination will contribute significantly to this thesis. Much of the debate in relation to the lack of progress of self-determination for Aboriginal people in Australia is linked to the notion that welfare dependency is a major barrier to achieving regional

economic independence, local self-governance and individual autonomy, all key aspects of self-determination.

Finally, Werther's, *Self Determination in Western democracies, Aboriginal Politics in a Comparative Perspective, (1992)* identifies the issue of self-identification versus imposed identification and how self-determination has empowered some of the most underprivileged groups.

Werther assesses the development of self-determination while taking account of the impact of self-identification rather than imposed identification. In this way Werther highlights the need to utilise a non-ascriptive form of assessment. In doing so, one of the points under assessment is how self-determination has empowered some of the most underprivileged groups of peoples in the world.

In addition, Werther's analysis of these changes includes the realisation that an assessment of self-determination is best undertaken across a range of disciplines in order to be more comprehensively investigated and provides a working definition of self-determination upon which the claims of this thesis will be based, namely, internally defined self-determination aspirations free from external control.

## **Introduction**

As a Tasmanian Aboriginal woman and an active member of my community I have previously worked in education and training as an Aboriginal VET Officer with TAFE Tasmania (now the Tasmanian Polytechnic) and am currently employed as Aboriginal Health Development Officer with the Department of Health and Human Services (DHHS). These roles have enabled me to have a practical input into capacity building in my community. I currently develop and deliver Aboriginal cultural competence training to health service providers to ensure the provision of appropriate and accessible health services to Aborigines in Tasmania.

My academic career has been consistently focused on gaining knowledge and skills which can contribute in progressing Aborigine aims to achieve equity, equality and self-determination in our own land. To that end the topic of self-determination and the requisite concerns that many Australians, and Aborigines in particular, hold in regard to the potential to achieve Indigenous self-determination in this country became an imperative stepping stone in my quest to further consolidate my understanding of the issues. My long interest in Aboriginal politics, self-determination, human rights, social justice and cultural maintenance has been immeasurably enhanced by the opportunity to undertake this research project.

This thesis will provide an outline of the concept of self-determination beginning with the history of the development of the concept and progressing to the role of the United Nations in supporting the growth and development of both the concept and attempts to achieve self-determination. Not least of all the support by the United Nations to include Indigenous peoples in the formulation of, specifically, Indigenous self-determination: a previously unprecedented event.

Defining self-determination and assessing the international discourse of concerns relating to implementation requires an overview of definitions of self-determination and the role those various definitions have played in that discourse. An understanding of the variety of definitions also highlights the complexity of the various debates and supports the aim of arriving at a workable definition for application in this thesis. To that end a chapter devoted to definitions of self-determination is warranted and includes the perspective of the debate which identifies the 'self' as the operative word in the phrase, self-determination, thus reducing the concept to a focus on the individual. This argument allows for the potential to view self-determination as reducible to the ultimate aim of individual self-determination.<sup>1</sup>

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<sup>1</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, p7.

Current debate within the United Nations has focused on how to achieve self-determination for identified groups rather than, specifically, for individuals. However, there is an influential macro-theory that describes the 'functioning of personality within social contexts' entitled self-determination theory.<sup>2</sup> The theory bears mention as it links the notion of individual and group self-determination by offering an argument about the interaction of the two forms. In addition there is conjecture about the impact of thwarted self-determination aims and the relationship of that occurrence to ill-being. This argument is particularly relevant to Aboriginal self-determination in Australia as an assessment tool in regard to Aboriginal social and cultural disadvantage.

While this papers' predominant focus will be on Indigenous self-determination a key factor of Indigenous self-determination is the aim of achieving equity and equality. Recent statistics strongly support the argument that Indigenous people, and more specifically, Aboriginal Australians, suffer inequitable health outcomes. It is not unreasonable to attribute a degree of efficacy to the notion that the non-attainment of self-determination contributes to Indigenous over representation in negative health and wellbeing outcomes. Therefore, research that supports the notion that not achieving self-determination can result in negative human and social outcomes' is a perspective directly relevant to the subject matter of this thesis.

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<sup>2</sup> Self-determination Theory, [www.psych.rochester.edu/SDT/theory.html](http://www.psych.rochester.edu/SDT/theory.html) 7/08/2006, p1.

In terms of equity the attainment of socio-economic, health and education outcomes of a standard commensurate with mainstream outcomes is an imperative. However, this thesis will not attempt to overly investigate notions, discourses and impacts in relation to individual self-determination: except where necessary to elicit comprehensive understanding in regard to various international discourses which utilise elements of individual self-determination in order to justify or strengthen the veracity of respective arguments. For that purpose it is necessary to acknowledge, if briefly, the existence of extensive research into, and theories relating to, individual self-determination.

In relation to the substantive subject matter of this thesis an understanding of the historical development of group-focused self-determination can assist in highlighting how the international community has gradually conceded to accept the reality and right of Indigenous peoples' to Indigenous self-determination. I will then discuss current legal and international dimensions, popular discourses and forms of self-determination currently implemented.

The thesis then goes on to highlight Aboriginal self-determination in practice in Australia from 1972 until 2009. The purpose is to assess how Aborigines have consistently maintained their distinctiveness, sovereignty and custodianship. It is also important to the subject matter of this thesis to outline how Aborigines continue to fight for self-determination rights in the face of government opposition. In addition, highlighting the inherently differing methods of Aboriginal governance and organisation in comparison with the Australian system of party politics and the consequent impact on the realisation of Indigenous self-determination relates to the central purpose and argument presented in this dissertation. In support of this argument I will discuss how Australian governments have viewed, interpreted and implemented and/or undermined and denied Aboriginal self-determination.

In order to assess the efficacy and achievements of Aboriginal attempts to attain the right to be a self-determining group I have utilised issues such as land rights claims, the High Court Mabo decision, the Northern Territory intervention and the historical and subsequent responses by successive Australian governments, the Australian media, non-indigenous citizens and Aborigines to assess the degree of success of Aboriginal self-determination aspirations in Australia in relation to these issues.

Indigenous self-determination may be a right but the difficulty of achieving self-determination as Aborigines in Australia is compounded by a number of issues worthy of discussion and investigation. Notwithstanding the importance of land rights in the quest for Aboriginal self-determination other factors, in recent history, have attributed to making that very aim even more difficult.

The reality may well be that Aborigines in Australia view self-determination as an inherent right but governments have systematically implemented legislation and policy changes which make the fruition of that aim seemingly more difficult to attain.

The right to representative government by Indigenous peoples is an element of self-determination but the interpretation by Aborigines of what representative government means differs significantly from the Australian nation states view that Aborigines are afforded representative government. Other issues include the right to economic independence, education and equitable health outcomes.

While successive Australian governments have attempted to implement programs with a view to achieving equity for Aborigines those programs have, generally, failed. This thesis will focus on a range of programs/policy/legislation and identify the elements, or lack of elements, of self-determination afforded Aborigines in the imposition of those externally developed programs: with a view to assessing the level to which Aborigines can claim to have access to and experience of self-determination.

Finally a comparative assessment relating to the support for Indigenous self-determination evidenced in the respective constitutions, policy and legislation of New Zealand, the USA and Canada will assist in highlighting how other nations have afforded support for Indigenous peoples in those countries to achieve a certain degree of self-determination. I will outline brief examples of how Australia compares to international situations and whether current trends in Australia are on track to meeting Aboriginal aspirations in any similar way with any degree of success and, most importantly, with support for and recognition of Aboriginal agency, capacity and inherent rights.

The questions for this thesis are: can Australia claim to support Indigenous self-determination if the imposition of current government initiatives continues. Can Australian governments alter the underpinning philosophies of protectionism and paternalism which have failed so consistently in order to fully support Indigenous self-determination. Finally, how can Aborigines, the most significantly disadvantaged minority in Australia, battle the organised and systemic form of democratic government in this country while adhering to Aboriginal cultural norms.

In conclusion, I intend to draw together the relevant points, which include the history of self-determination, the legal dimensions, current discourses, forms of self-determination, international examples and Aboriginal Australia in comparison for the purpose of assessing the potential for Aboriginal self-determination in Australia. I hope the body of research will identify and assess the degree of current achievements, investigate potential impediments to Aboriginal self-determination including opposing organisational and governance issues such as the difference between Australian organised democratic government systems and Aboriginal community governance. I also seek to outline the requisite circumstances, attitudes and ideologies required in Australia in order that Aborigines may achieve the right of self-determination.

## **Chapter One: The History of Self-determination**

One of the major issues associated with the concept of self-determination is the range of interpretations of what self-determination might entail and how the concept could be accommodated by the various nation states affected. The concept of self-determination has continued to evolve over time. This r/evolutionary process resulted from a variety of pressures including social, political, cultural and territorial aspirations. Besides upholding the basic principles of self-determination, as they relate to human rights, the aim of the United Nations is to arrive at an internationally acceptable consensus.

Upon investigation of how self-determination can be defined it becomes clear that self-determination is a complex issue yet to be satisfactorily resolved. Understanding the history of self-determination may explain how current contemporary ideologies have emerged and developed.

The concept of self-determination incorporates a set of basic principles and aims which have developed over time into internationally recognised elements of human rights and racial equality. International validation of the concept of self-determination relates to a long-term developmental process which spans centuries, but, only relatively recently included recognition of Indigenous self-determination.

A brief historical outline of the development of the concept of self-determination assists in identifying the evolution of political, legal and philosophical discourse which has driven an emerging global conscience: recognising human rights, racial equality and self-determination for all. The historical aspects of those discourses emphasise the culmination of awareness that achieving self-determination on a global scale *must* include consideration of Indigenous self-determination. This development provides insight into the growth of '*enlightenment*' that has fostered the continuing renewal of Indigenous re-empowerment.

Historically, self-determination (is an integral element of human rights and, as such) has manifested as the principle by which nations, states and a variety of other groups have laid claim to their right to autonomy. This thesis is particularly concerned with the development and implementation of Indigenous self-determination. The history of the discourse provides an overview of why and how such a concept came to exist. Indigenous self-determination remains a necessary step in the process of achieving international racial equality, given the inextricable connection of the inception of Indigenous self-determination arising from the United Nations attempts to achieve equality for all peoples.

Many of the historical events that highlight a human need for self-determination are intriguing. However, the purpose of briefly outlining those events is an attempt to demonstrate the influence of self-determination aims. It is the underlying concept, the need to fulfill a personal, or collective, aim for liberation and equality, and how that need has driven the course of history that is important to this section of the discussion.

The concept of self-determination emerged from the principle of peoples' right to popular sovereignty. Beginning with the emergence of self-determination, in the form of popular sovereignty, as a principle justification of the 1789 French Revolution and progressing to the idea of nationalism as a means to achieve self-determination.

The general acceptance of the concept of self-determination is demonstrated in the ongoing discourse relating to the integration of self-determination into existing social structures.<sup>3</sup> This process had theorists, academics and philosophers of the time proposing a range of solutions to address the social, political and economic aftermath of the movement from rule by a sovereign claiming divine right to that of popular sovereignty.

There exists a general consensus of agreement that the 1789 French Revolution is credited as a starting point for the growth of acceptance of the ideal of popular sovereignty. To oversimplify, the 1789 French Revolution was born of a need, by the majority of citizens, to eradicate oppressive rule. As Article three of the Declaration of the Rights of Man and Citizen as approved by the National Assembly of France on August the 26th, 1789 states,

'The principle of sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.'<sup>4</sup>

This early historical awareness began the slow but eventual process of the recognition of human rights, equity and equality. Much remained still to be achieved and those ideals of liberty and equality were by no means assured. By 1815 France re-instated a monarch but lack of confidence in the King and his ministers would, once again, erupt in 1847.

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<sup>3</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, pp 1-6

<sup>4</sup> Declaration of the Rights of Man and Citizen, Alexis Francois Pison de Galland, 1747-1826, Prepared by Gerald Murphy, Distributed by the Cybercasting Services Division of the National Public Telecomputing Network (NPTN), [http://www.curriculum.edu.au/democracy/ddunits/downloads/pdf/dec\\_of\\_rights.pdf](http://www.curriculum.edu.au/democracy/ddunits/downloads/pdf/dec_of_rights.pdf), 15/03/2006.

The 1848 Revolutions saw a renewed attempt, as Ronen claims to, recognise: 'The principle of popular sovereignty, expressed as the right of self-determination....'<sup>5</sup> The aims of national self-determination were not fully achieved by either the French revolution or the Napoleonic wars.

Other European powers were to experience similar unrest and the progression of the aim to achieve self-determination would begin to reverberate on a broader scale. The revolutionary instances of this period in history are, essentially, claims for self-determination. Each nation, state, religious and linguistic group was fighting to achieve self-determination in the form of 'linguistic and cultural autonomy'.<sup>6</sup> Traditional forms of leadership sought to maintain the integrity of national territories, even extend them, while supporters of popular government sought autonomy. The revolutions across Europe in the 19<sup>th</sup> century occurred as a result of the need and desire for self-determination.<sup>7</sup> Europe underwent an immense transformation, geographically and ideologically, which culminated in a transformative process setting the ideological stage for two world wars.

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<sup>5</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, p4.

<sup>6</sup> The European Revolution of 1848 – Aftermath, <http://www.age-of-the-sage.org/history/1848/reaction.html> p3, 15/03/2006

<sup>7</sup> Dockrill, M. *World War II: The world after World war I*, Microsoft Encarta Online Encyclopedia, 2006, [http://uk.encarta.msn.com/text\\_761563737\\_2/World\\_War\\_II.html](http://uk.encarta.msn.com/text_761563737_2/World_War_II.html) (05/03/2006)

It is well documented that the underlying cause of World War I was distinctly related to self-determination. The major European powers were involved in a crusade for Nationalism, protecting and expanding borders and re-unification. The shifting tensions mounted from 1905 to 1914 and a number of crises erupted between factions, all related to territorial claims. While nation building remained a core aim of the era, growing conflict arose from self-determination claims that were often in direct opposition to nation building agendas: ultimately resulting in the declaration of war.<sup>8</sup>

World War I was a conflict that involved 32 nations and lasted four years. The end of this conflict signified the beginning of more widespread, organised, semi-inclusive, inter-nation/al discussion which proffered a development point for an internationally recognised organisation: firstly, The League of Nations then The United Nations, after World War II.

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<sup>8</sup> Dockrill, M. *World War II: The world after World war I*, Microsoft Encarta Online Encyclopedia, 2006, [http://uk.encarta.msn.com/text\\_761563737\\_2/World\\_War\\_II.html](http://uk.encarta.msn.com/text_761563737_2/World_War_II.html) (05/03/2006)

The recognition of sovereignty as a right of self-determination, according to Ronen, was widely acknowledged by the end of World War I.<sup>9</sup> However, there remained dissatisfaction with the geographical outcomes of the war. When Woodrow Wilson proffered his notion of self-determination it was linked to the concepts of self-government, democracy and world peace. For Wilson, self-government was aligned with democracy as a method of ensuring ongoing choice of representative government: leading to world peace. These views are referred to as 'internal' self-determination, whereas, 'external' self-determination is the right to freedom from foreign rule and oppression.<sup>10</sup> 'Domestic' self-determination is the right of cultural, or minority groups, to internal self-determination: equality of representation.<sup>11</sup>

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<sup>9</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, p4.

<sup>10</sup> For further information on definitions and forms of self-determination see chapter 2- *Definitions of self-determination*.

<sup>11</sup> Pomerance, Michla, *Self Determination in Law and Practice, The New Doctrine in the United Nations*, Martin Nijhoff Publishers, The Hague/Boston/London, 1982, p 1.

Post World War I the Conference of Versailles in 1919 was specifically related to the implementation of self-determination as a means of achieving post war peace. Ethnicity was a common component of discussion at the conference but many ethnic claims were ignored in deference to stronger political factions representing powerful nation states.<sup>12</sup> The tasks set for those involved in the Versailles Conference were complex and essentially unachievable. The participants were required to make decisions regarding self-determination claims without law or guidelines. It eventuated that successful claims were, necessarily, successful at the expense of other claims.

The complexities of changing geographical boundaries, the element of attempting to reconcile ethnic, linguistic and historical boundaries coupled with pressure due to political agendas served to ensure minimal success. Recognition of Indigenous self-determination rights was raised but quickly dismissed on the basis of the widespread belief that hunter gatherer groups lacked the capacity to self-govern. The outcomes of the conference resulted in an ad-hoc version of Wilson's vision that satisfied few claims and led to ongoing dissatisfaction.<sup>13</sup>

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<sup>12</sup> "Signing of the Treaty of Versailles, 1919" Eye Witness to History, (2005) , p1.

<sup>13</sup> Pomerance, Michla, *Self Determination in Law and Practice, The New Doctrine in the United Nations*, Martin Nijhoff Publishers, The Hague/Boston/London, 1982, pp 3-7.

The forming of the League of Nations was an outcome of the 1919 conference designed to promote ongoing peace and communication between nations. Ronen cites the founding of the League of Nations as having, 'been created, in part, to promote Wilsonian self-determination.'<sup>14</sup> It was at this time that the focus of self-determination shifted to that of minority groups. General consensus credits Woodrow Wilson as the driving force behind this shift in thought. Although, according to Connor, the Wilsonian concept of self-determination of nations was not a consideration for universal application. It was a policy to re-instate sovereignty to an identified, and limited, group of nations. The resultant universality of the concept arose because of the applicability of the notion.<sup>15</sup>

Any definition of self-determination is, necessarily, inclusive of each "self" and cannot form the basis for an argument to exclude unless the definition of self-determination is altered dramatically. In which case it would cease to be the very thing it sought to achieve.

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<sup>14</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, p10.

<sup>15</sup> Connor, Walker, *Self-Determination: The New Phase*, World Politics, Vol. 20, No. 1 (Oct., 1967), p 31.

National self-determination had achieved widespread acceptance and implementation but the progress of self-determination was about to take a direction that would have widespread repercussions for the international community. Nationalism, democracy, equality: all facets of self-determination and all facets incompatible with the concept of colonialism. Self-determination claims can and have been based upon a range of rationales including religion, linguistics, heritage, geography and common history. Adolf Hitler's initial claims to self-determination for Germanic peoples were based upon a linguistic rationale claiming that German speaking peoples should be united under a common government as one nation. Hitler's German forces occupied the Rhineland in 1936, in line with the current thinking around self-determination.

At the Munich conference in 1938 Chamberlain, Daladier and Mussolini agreed to Hitler's occupation of Sudetenland which represented a predominantly German speaking section of Czechoslovakia.<sup>16</sup> At this point Hitler's movements had been viewed as self-determinative in terms of redefining boundaries appropriate to achieving self-determination for German peoples. It wasn't until Hitler occupied all of Czechoslovakia that disagreement arose.

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<sup>16</sup> *Speeches that Changed the World: the Stories and Transcripts of the Moments that made History*, Murdoch Books, Australia, 2000, p. 79.

Hitler's march into Poland in 1939 was purportedly to secure other predominantly German population areas in the name of self-determination. However the occupation of Czechoslovakia could not be justified in the same terms as those territories were not occupied by predominantly German speaking peoples.<sup>17</sup> A correlation can be drawn between Germany's initial self-determination claims, the resulting colonialist style invasions and the post World War II anti-colonialist sentiment. Self-determination was a valid rationale for territorial sovereignty but not a valid justification for empire building.

The shift towards anti-colonialist sentiment emerged after World War II with a range of United Nations Declarations that were aimed more specifically at regaining self-determination for colonised peoples. Much of the international discussion around self-determination in the middle decades of the 1900's centered on self-determination during and after de-colonisation. The general consensus was that there should be freedom from foreign intervention. There were two major areas of consideration: they were internal and external self-determination.

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<sup>17</sup> *Speeches that Changed the World: the Stories and Transcripts of the Moments that made History*, Murdoch Books, Australia, 2000, p. 82.

As Van Dyke highlights internal self-determination soon gave rise to domestic self-determination.<sup>18</sup> This effectively changed the meaning of self-determination claims and led, eventually, to the emergence of Indigenous claims for self-determination.

The definitions arising from the terms internal and external self-determination demonstrates the variation of interpretations. According to Van Dyke, a political imperative improves the purity of definition for internal self-determination.<sup>19</sup> Throughout this period of identifying practical implementation of self-determination it appears that internal self-determination posed many practical difficulties. Governments tended to qualify the potential of practical self-determination in order to limit geographical, political and social divisiveness. Whatever the motivation the results were a multitude of interpretations regarding what self-determination could or should achieve.

Concerns that had initially been identified through the processes of the Versailles Peace Conference in 1919 were growing in complexity as the notion of universal application of self-determination gathered momentum. As Pomerance succinctly states,

“The issue of the “critical date” or “critical period” inescapably enters into the calculus, thereby demonstrating that definition of the “self” is not only space-bound and group-bound: it is also time-bound.”<sup>20</sup>

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<sup>18</sup> Van Dyke, Vernon, *Self-determination and Minority Rights*, International Studies Quarterly, Vol. 13, (Sept. 1969), p266.

<sup>19</sup> Van Dyke, Vernon, *Self-determination and Minority Rights*, International Studies Quarterly, Vol. 13, (Sept. 1969), pp 226-7.

<sup>20</sup> Pomerance, Michla, 1982, p2.

The Atlantic Charter, 1941, signed by Franklin D. Roosevelt and Winston S. Churchill set parameters that incorporated national self-determination principles, recognised the sovereign rights of all nations and denounced the prospect of colonisation by means of force. Those principles were again endorsed in the 1945 Yalta Agreement in the *Declaration of Liberated Europe* and at the United Nations Conference in April, 1945 in the *United Nations Charter*.<sup>21</sup>

The recognition of self-determination as a human right continued within the United Nations and is acknowledged in numerous resolutions, including: 1942 – Declaration of the United Nations, the Charter of the United Nations, the Covenants on Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution 1514 [XV], 14/12/1960, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States (Resolution 2625 [XXV], 24/10/1970 all acknowledge self-determination, specifically among colonised peoples.

“Decolonisation has shown that the right to self-determination is not restricted to one race, not based on the size or economic and political preparedness of a group, nor even on a common culture or common history-but first of all on the human right not to be ruled by other peoples.”<sup>22</sup>

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<sup>21</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, p36.

<sup>22</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, pp 5-6

The Human rights Charter, 1948, developed from the notion of equality for all peoples: evolving through a process of questioning the elements that undermined the realisation of that equality. Colonialism was a barrier to true equality given the nature of many instances of colonisation. The rise of anti-colonialist sentiment and global calls for equality and freedom from oppression heralded the birth of Indigenous self-determination.

In 1962 at the symposium on representative democracy in the Dominican Republic the following statement stressed one of the key barriers to Indigenous self-determination that, in many cases, continues to stifle progress: representative government.

'Signifies not only the right of colonial peoples to independence.....but also the right to each national community....to direct, organise, and develop its national life in accordance with its free and spontaneous will....through the exercise of representative democracy.'<sup>23</sup>

The question of representative democracy as it pertains to Indigenous self-determination would, subsequently, become an issue that would be addressed by Indigenous people at the United Nations.

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<sup>23</sup> Van Dyke, Vernon, '*Self-determination and Minority Rights*', *International Studies Quarterly*, Vol. 13, (Sept. 1969), pp 228.

This brief history outlines the historical discourse of self-determination and demonstrates the political and social influences that re-defined the initial concept of popular sovereignty culminating in a universal human rights agenda incorporating the right to self-determination. What becomes clear is that the underlying principles of the concept transcend ethnicity, nationality, religion and political orientation. Beginning as an element of human rights self-determination has now become an internationally accepted right and Indigenous people have asserted their respective rights distinct from colonising powers and current governments.

If self-determination is to succeed as a common right with meaningful application then Indigenous self-determination is an imperative that cannot be dismissed: or self-determination becomes selective and effectively undermines the very principles upon which it is founded. Equality and equity are key factors in the emergence of Indigenous self-determination.<sup>24</sup> A claim for equality asserts the rights of Indigenous peoples to demand all that non-indigenous peoples' claim, including the right to assert sovereignty post-colonialism.

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<sup>24</sup> **Equality** in this thesis should be interpreted as '*the state of being equal*', while **equity** should be interpreted as related to the principles of natural justice and fair conduct. *The Collins Dictionary and Thesaurus*, HarperCollins, England, 1992, p. 334.

## **Chapter Two: The United Nations**

This chapter outlines the history of the concept's development at the United Nations from the 1960s. A number of the procedural changes which occurred at the United Nations is included in addition to mapping the changing ideology over time and leading, ultimately, to the inclusion of Indigenous peoples' in the process of disseminating self-determination. The notion of equality adopted in the early history of the United Nations, as firstly a principle and latterly a right, was destined to afford recognition of Indigenous self-determination rights given that the discourse is related to achieving equality for all.

Throughout the attempts by the United Nations to disseminate appropriate self-determination processes and protocols a number of significant procedural changes occurred. These changes were a direct result of seminars instigated in order to elucidate solutions to self-determination issues, as part of the wider issue of dealing with racism.

The ideology of equality, implemented in the initial stages, went some way to ensuring that the resulting reports would include basic principles of co-operation between Indigenous and non-Indigenous people. Central to the aims of this thesis, is the historical development of the concept of self-determination. Consequently, mapping the procedural and ideological changes throughout the existence of the United Nations is paramount to elucidating the issues self-determination claims pose for the international community.

There remain interpretive differences between international legal definitions and other notions of what self-determination does or should mean. This is accompanied by concerns that any document approved by the United Nations may be considered an international legal document allowing governments to justify policy based upon that definition of self-determination. Given the breadth of differing perceptions of how self-determination should be interpreted and implemented there arise concerns in regard to potential risks that any international definition could subvert the actual self-determination aims of individual Indigenous groups.

Indigenous self-determination, arguably the newest form of self-determination, gained international recognition in association with the rise of anti-colonial sentiment and is further supported by ideologies outlined in the Declaration of Human Rights.<sup>25</sup> Although self-determination is not specifically outlined as a human right in the Declaration the growth of acknowledgement of rights to equality for all has resulted in the belief that the notion of self-determination is a human right. For Indigenous peoples' this newly acknowledged right has afforded greater ethical weight to the argument that Indigenous peoples have the right to maintain cultural distinctiveness, cultural affiliation and cultural identity related to place. The Human Rights Charter, 1948, affirms Indigenous rights and supports this perspective.

The Human Rights Charter, 1948, developed from the notion of equality for all peoples and evolved through a process of questioning the elements that undermined the realisation of that equality. According to Van Dyke self-determination moved from the status of principle to that of a right in 1966 when the United Nations approved the International Covenant on Human Rights and in Article 1 the term 'right of self-determination' appears in paragraph 1 and 3.<sup>26</sup> The semantics of language surrounding the debate between whether self-determination is a right or a principle

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<sup>25</sup> *Universal Declaration of Human Rights*, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948, <http://www.un.org/overview/rights.html>

<sup>26</sup> Van Dyke, Vernon, *Self-determination and Minority Rights*, *International Studies Quarterly*, Vol. 13, No. 3, September, 1969, pp. 224.

has been confounded by various nation states wavering between the two terms depending upon the issue at hand. The various interpretations of the impact of this declaration on claims for self-determination are important in assessing those claims as there are elements of those rights which relate specifically to elements of self-determination claims. Article 27 (1) for example, states,

‘Everyone has the right freely to participate in the cultural life of the community,.....’<sup>27</sup>

Cultural life for Aboriginal Australians is unique to Aboriginal communities and distinct from mainstream Australian culture. Therefore it is not untoward to interpret this right as relevant to the maintenance of Aboriginal, or Indigenous, cultures.

This argument is further strengthened by the preamble to The Charter of the United Nations which contains the following passages:

‘to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and’

‘to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained....’<sup>28</sup>

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<sup>27</sup> *Universal Declaration of Human Rights*, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948, <http://www.un.org/overview/rights.html>, p 5 of 6.

<sup>28</sup> *Preamble to the Charter of the United Nations*, <http://www.un.org/aboutun/charter/preamble.htm>, 17/03/2006.

Taking the perspective that self-determination is defined from within it is possible to interpret the previous clauses as supportive of Australian Indigenous self-determination claims, given the view that Australian Aboriginal people consider themselves, generally, as a distinct nation. In any case, the passages afford a platform from which such an argument can be strenuously advanced.

In further support of Indigenous self-determination is the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 [XV], 14/12/1960, which states,

*'Recognizing* the passionate yearning for freedom in all dependant peoples and the decisive role of such peoples in the attainment of their independence,'<sup>29</sup>

And,

*'Convinced* that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory.'<sup>30</sup>

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<sup>29</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 66, 17/03/2006.

<sup>30</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

In addition to the solemn proclamation which asserts the, 'necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations,'<sup>31</sup> to the intended end that:

'2. All peoples have the right to self-determination: by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'<sup>32</sup>

These and other passages fully support an interpretation that upholds Indigenous Australian self-determination. However, other passages have the potential to weaken and undermine the strength of Indigenous argument, in particular,

'6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations,'<sup>33</sup>

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<sup>31</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 667, 17/03/2006.

<sup>32</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

<sup>33</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

The preceding passages highlight the potentiality for incongruence of interpretation as applied to self-determination rights and demonstrate the basis upon which the international discourse has been situated. The United Nations General Assembly identified the rationale that heralded the end of colonialism with the recognition of, “the passionate yearning for freedom in all dependant peoples.....”<sup>34</sup>, while also acknowledging, “that the peoples of the world ardently desire the end of colonialism in all its manifestations.”<sup>35</sup>

The 947<sup>th</sup> plenary meeting on 14<sup>th</sup> December 1960 ended with the emergence of seven declarations. Of these seven declarations four of them have lent weight to a diversity of interpretations that both support and undermine self-determination. For instance, point number one states that “alien subjugation” denies “fundamental human rights” and is “contrary to the Charter of the United Nations”<sup>36</sup>. Point two affirms the right of all peoples to self-determination including the freedom to maintain cultural rights.

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<sup>34</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 66, 17/03/2006.

<sup>35</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 66, 17/03/2006.

<sup>36</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

The next point acknowledges that there is no basis for delaying independence. While point five demands immediate action towards restoring independence and,

‘to transfer all powers to the peoples of those territories..’.<sup>37</sup>

Finally, point seven calls for all nations to observe the charter in addition to calling for “respect for the sovereign rights of all peoples and their territorial integrity.”<sup>38</sup> Theoretically it seems that the rights of all peoples, including Indigenous peoples, are upheld by the charter. The qualification arises in point six which states that interference with national unity is incompatible with the Charter.<sup>39</sup>

This ambiguity continues in point seven which states that there should be no external interference in internal affairs and a continued respect for sovereignty and the associated rights of all peoples, including territorial integrity.<sup>40</sup>

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<sup>37</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

<sup>38</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

<sup>39</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

<sup>40</sup> *Declaration on the granting of independence to colonial countries and peoples*, 1514 (XV), 1960, <http://www.un.org/documents/ga/res/15/ares15.htm> , p. 67, 17/03/2006.

Decolonisation has given rise to considerations fraught with difficulties: at what point is sovereignty undermined, diminished or extinguished? Aboriginal Australians maintain their sovereignty, their territorial rights and the right to self-determination as a culturally distinct nation and continue to assert and fight for the realisation of those rights.<sup>41</sup> In Ronen's assessment,

"Decolonisation has shown that the right to self-determination is not restricted to one race, not based on the size or economic and political preparedness of a group, nor even on a common culture or common history-but first of all on the human right not to be ruled by other peoples."<sup>42</sup>

Australia, as a Nation State is undeniably a nation founded by colonisation. Indigenous peoples in Australia suffered, and continue to suffer the effects of invasion. The inalienable rights of Australian Aborigines have never been ceded to the Australian nation. Consequently, Aboriginal Australians can, rightly, claim Indigenous self-determination. In order for any such claim to achieve success it must have the support of the United Nations and agreement from the government of the colonising nation. In the event that any respective government does not support basic principles of human rights for its Indigenous citizens one of the United Nations roles is to disparage the imposition of destructive processes which may further marginalise Indigenous peoples.

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<sup>41</sup> This point will be discussed in greater detail in a later chapter.

<sup>42</sup> Ronen, Dov, *The Quest for Self-determination*, 1979, pp. 5-6.

The nation states involved in the United Nations represent many Nation States who have previously been responsible for the marginalisation of Indigenous minority groups for a variety of reasons including colonisation. It is these Nation-States who make up the United Nations and it is to the United Nations that Indigenous groups must turn to garner support for self-determination.

The issue of language, terminology and interpretation has meant that the process for supporting the achievement of Indigenous self-determination aspirations has been slow and cautious. Nation states have attempted to weaken the Charter of the Rights of Indigenous Peoples by suggesting terminology that could more easily be interpreted as lesser rights, for example, self-government in place of self-determination.<sup>43</sup> Self-government means, the government of a country or nation by its own people. Autonomy in a literal sense means the right or state of self-government, especially when limited, whereas, self-determination means the ability to make a decision for oneself without outside influence: the right of a nation or people to determine its own form of government. Replacing the term self-determination with that of autonomy or self-government in the charter would serve to diminish the potential outcomes.

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<sup>43</sup> Erni, Christine and Jensen, Marianne, *Indigenous Affairs*, Self-determination Issue, 3/2001,

In relation to the effects of colonialism the United Nations Resolution number 2625 (XXV), 24/10/1970,<sup>44</sup> states:

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned:<sup>45</sup>

A number of qualifying statements relevant to this thesis and its arguments include:

'and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights and is contrary to the Charter.'<sup>46</sup>

And:

'The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right to self-determination by that people.'<sup>47</sup>

The qualifying paragraphs continue to delineate the rights of colonised peoples by asserting elements such as the right to, 'seek and to receive support in accordance with the purposes and principles of the Charter.'<sup>48</sup> and that,

'The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it,'<sup>49</sup>

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<sup>44</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

<sup>45</sup> The United Nations General Assembly, Twenty-fifth Session, <http://www.un.org/documents/ga/res/25/ares25.htm> , p 124, 17/03/2007.

<sup>46</sup> The United Nations General Assembly, Twenty-fifth Session, <http://www.un.org/documents/ga/res/25/ares25.htm> , p 124, 17/03/2007.

<sup>47</sup> The United Nations General Assembly, Twenty-fifth Session, <http://www.un.org/documents/ga/res/25/ares25.htm> , p 124, 17/03/2007.

<sup>48</sup> The United Nations General Assembly, Twenty-fifth Session, <http://www.un.org/documents/ga/res/25/ares25.htm> , p 124, 17/03/2007.

<sup>49</sup> The United Nations General Assembly, Twenty-fifth Session, <http://www.un.org/documents/ga/res/25/ares25.htm> , p 124, 17/03/2007.

The pertinent point here is the reference to colonised peoples and the issues which have arisen in relation to interpretations, or emphasis, applied to one paragraph over another. In the instance of this Declaration it is reasonable to assume that the paragraph which represents the greatest interpretive issue is the following paragraph, which states:

'Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.'<sup>50</sup>

We are faced then with the notion that Australia represents a State which adheres to these imperatives in accordance with the Charter: is that in fact the reality?<sup>51</sup> Further qualifying statements occur in the *General Part* and declare that:

'In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles'.<sup>52</sup>

This only minimally diminishes the confusion and the discourse continued: culminating in the formation of a working group.

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<sup>50</sup> The United Nations General Assembly, Twenty-fifth Session, <http://www.un.org/documents/ga/res/25/ares25.htm> , p 124, 17/03/2007.

<sup>51</sup> The degree to which Australia adheres to the principles of these imperatives will be discussed more fully in later chapters of this thesis.

<sup>52</sup> The United Nations General Assembly, Twenty-fifth Session, <http://www.un.org/documents/ga/res/25/ares25.htm> , p 124, 17/03/2007.

The Working Group on Indigenous Peoples has developed a Draft Declaration of the Rights of Indigenous Peoples for submission to the United Nations. The group was established in 1982 with the aim of formulating international standards for the protection of Indigenous peoples. Indigenous representatives at the 11<sup>th</sup> session of the Working Group almost unanimously agreed that , ‘there must be no fetters on the right of self-determination’ and stated that Indigenous peoples would accept nothing less than the full and equal right that other “peoples” enjoyed by virtue of Article 1 of the International Covenants.<sup>53</sup>

Initially, Nation States involved in early sessions of the working group were opposed to the inclusion of self-determination in the draft document. This opposition altered slightly when the Australian representative proposed the inclusion of limited self-determination in 1991. The point of discord at this point in the proceedings was that many Nation States felt that any inclusion of self-determination should be limited while the Indigenous representatives felt that any model of Indigenous self-determination should not be subjected to any limitations by any Nation States external to Indigenous Nations (even when linked domestically).

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<sup>53</sup> Iorns, Catherine J., The Draft declaration of the Rights of Indigenous Peoples, <http://www.murdoch.edu.au/elaw/issues/v1n1/iorns2.html> 4/05/2005

Essentially, any form of self-determination which was governed by imposed external criteria could not be considered as true self-determination. If such limitations were placed on Indigenous self-determination the resulting form would be a lesser model based on external controls and therefore, necessarily, discriminatory.<sup>54</sup> The instigation of the Sub-commission on Prevention of Discrimination and Protection of Minorities in 1987 led to a more measured approach to Indigenous peoples aspirations by increasing Indigenous participation.

The resulting report and recommendations were adopted by consensus and it was the first time non-government representatives participated in an official capacity. Ultimately in 1988 the Sub-commission called for the participation of Indigenous peoples as well. Consequently, in 1989 representatives of nine Indigenous organisations were able to participate. The key factor was in the equality of representation. The non-government and Indigenous representatives held equal footing with government representatives: representing a key turning point in the international discourse on self-determination and, more particularly, Indigenous self-determination.

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<sup>54</sup> Iorns, Catherine, J. *The Draft Declaration of the Rights of Indigenous Peoples*, <http://www.murdoch.edu.au/elaws/issues/v1n1/iorns2.html> p. 4 of 21, (04/05/2005).

The Sub-commission on Prevention of Discrimination and Protection of Minorities represented something of a catharsis in regard to the recognition of Indigenous rights to involvement in consultative processes at an international level. The declaration includes Indigenous right to difference and the right to 'self-determination and participation in decision-making. For Australian Aborigines the battle is related not only to, a struggle for self-determination, but also, a battle for the right to be involved in decision-making processes.

In addition to fighting for these rights Aboriginal Australians also continue to suffer disadvantages despite the Universal Declaration of Human Rights, 1948, advocating 'a common standard of achievement for all peoples and all nations'<sup>55</sup> which states in Article 25 (1),

'Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family,.....'<sup>56</sup>

And Article 26 (1) which states,

'Everyone has the right to education.'<sup>57</sup>

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<sup>55</sup> *Universal Declaration of Human Rights*, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948, <http://www.un.org/overview/rights.html>, p 1 of 6.

<sup>56</sup> *Universal Declaration of Human Rights*, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948, <http://www.un.org/overview/rights.html>, p 5 of 6.re

<sup>57</sup> *Universal Declaration of Human Rights*, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948, <http://www.un.org/overview/rights.html>, p 5 of 6

In addition to Article 17 (1) and (2) which outline the following rights as,

‘Everyone has the right to own property alone as well as in association with others.’<sup>58</sup>

And:

‘No one shall be arbitrarily deprived of his property.’<sup>59</sup>

The United Nations Committee for the Eradication of Racism and Discrimination (CERD) in 1999 placed Australia on its agenda as a matter of urgency with regard to the 1998 amendments to the 1993 Native Title Act with the view that the amendments were racially discriminatory.<sup>60</sup> Ten years later in March 2009 little has changed as CERD expressed concerns in regard to the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), the barriers faced by Aboriginal Australians to Native Title, over-representation in prison systems and the inequitable statistics in relation to health, employment, education and income, as well as the lack of fair and just redress for stolen generations.

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<sup>58</sup> *Universal Declaration of Human Rights*, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948, <http://www.un.org/overview/rights.html>, p 4 of 6

<sup>59</sup> Articles 17 (1) and (2), 26 (1) and 25 (1) will factor in later discussions in this thesis in relation to the Northern Territory intervention.

<sup>60</sup> Human Rights, <http://eniar.org/news/humanrights.html>, 19/09/2009.

Further to this, in April, 2009 concerns were raised at the United Nations which included trepidation regarding the continued lack of an Indigenous elected representative body and the inherently racially discriminative act of the suspension of the Racial Discrimination Act, 1975, in order to implement the Northern Territory Intervention.<sup>61 62</sup>

Having discussed in some measure the history of self-determination, various definitions of self-determination and the development of the international discourse through various United Nations covenants we can now turn to a discussion regarding definitions of self-determination.

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<sup>61</sup> Human Rights, <http://eniar.org/news/humanrights.html> ,19/09/2009.

<sup>62</sup> These and other issues will be discussed more fully in subsequent chapters

### **Chapter Three: Definitions of Self-determination**

As discussed in previous chapters, self-determination, in its varying forms, has been used to drive changes throughout history. As an ideal quest, self-determination has impacted upon political and geographical boundaries. The concept of self-determination has emerged as an ideology utilised to justify war and revolution. In the mid-1900s the notion of self-determination contributed to altering the nation-building international ideology and continues to be viewed as a potential means by which many of the injustices of colonisation may be rectified.

In arriving at an understanding of the meaning of self-determination a number of factors require consideration. Most importantly is articulation of the various definitions of self-determination. Secondly, the question of which definition should the conclusions of this thesis be based? In direct relationship to the issue of definition is the query: are the aspirations of self-determination able to be achieved to such an extent that there is an end to the debate: an end where self-determination can be said to have been achieved.

In investigating the potential to achieve self-determination we are faced with the further question of whether there is a form of self-determination that should take precedence over other forms and, if so, how that may impact on the remaining forms.

Of major consideration in this thesis is the factor that Indigenous groups may lay claim to aspirations of group self-determination. On what basis should Indigenous, and other, aspirations be assessed? Issues such as sovereignty, governance, religion, ethnicity and Indigenous identity serve to highlight the innate complexity of self-determination as an achievable aim: particularly in light of the notion that each potential group claim may be based on differential criteria with equal veracity of merit.

There remains the need to ensure that any right to self-determination by any group does not result in the undermining of existing Nation States or the political rights of any other group: this remains a problematic issue. Any application of a priority status applied to one claim in preference over another necessarily undermines the right to self-determination for the claim assessed as less meritorious.

While the notion of self-determination has existed for centuries, the contemporary definition and application of the concept has given rise to an international discourse subject to contentious influences. Self-determination has been claimed as an ideal linked to the notion of 'self' and the rights of the individual. Another interpretation asserts it is a concept applicable to groups whose members share commonalities such as geographical connectedness, language and/or belief systems.<sup>63</sup> These seemingly divergent notions are, in reality, interconnected as the self or individual determines his or her membership of a group based upon a general human need to belong to a group which shares basically similar perspectives, lifestyle, language, place and aspirations. The group recognises individual belonging on similar criteria. The formation of a group can be based upon any or all of the requisite criteria for sameness. Individuals could belong to more than one group and experience any number of group affiliations that could each be defined differently. For example, these groups could be culturally, linguistically, politically, geographically, historically or religiously defined. Indigenous self-determination relates, specifically, to hunter-gather groups whose affiliation is predominantly defined culturally and is inseparably linked to notions of place.

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<sup>63</sup> Ronen, Dov., *The Quest for Self Determination*, Yale University Press, 1979, pp 24-25

The question of the 'self' and its relationship to self-determination aims or aspirations may not seem to be of paramount importance to the subject matter of this thesis, however, there is value in recognising the influence of a variety of discourses, inclusive of those related to the individual 'self'.

Self-determination as it relates to notions of the 'self' is linked to the development of the concept of self-determination which stems from the need for freedom of the individual. According to Ronen the 'self' is the individual and the 'others' are the rest of humankind. Ronen's theory is that the emergence of self-determination as a socio-political tool stems from the individuals' search for personal freedom and group membership is a step towards ultimate personal freedom. However, Ronen feels that unity can continue to be questioned infinitely. For example, supposing a cultural group achieved satisfactory self-determination according to their initial claims. This does not imply that all members of the group agreed with the initial claim. The potential for those members to re-form other groups to pursue self-determination in their own right remains. In effect the potential for more specific regional, local or individual claims remain viable.<sup>64</sup>

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<sup>64</sup> Ronen, Dov., *The Quest for Self Determination*, Yale University Press, 1979, pp 8-9.

Ronen also asserts that peoples' seeking self-determination view the nation-state as an obstacle<sup>65</sup>. Consequently, in order to achieve any meaningful progression towards self-determination it may be necessary to negate the potential for dissatisfaction, leading to continued self-determination claims, by crystallising definitions of self-determination to incorporate basic principles of what constitutes a group.

Historically self-determination was initially defined as an element of human rights. The changing ideology, or the move to politicise self-determination claims, as previously discussed, has led many groups to claim self-determination more strongly as a human right with the eventual realization at United Nations level that self-determination is, indeed, a human right. The notion that self-determination, as necessary process in achieving equality, is a principal of a higher law is pertinent to arguments for equality.

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<sup>65</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, 101.

Emerson differentiates higher law as an ethical or moral outlook that is changeable as society/ies recognise and validate injustices and impositions. Higher law is separate from regional, daily, legal expectations. Emerson postulates that higher law directly influences such international ideological evolution as growth in anti-colonial sentiment.<sup>66</sup> The previous ideology of colonialism no longer exists and the basis of this shift is relevant to achieving equality of human rights for all peoples.<sup>67</sup> This perspective supports the notion that colonialism, and the resulting contemporary moral and ethical impacts upon Indigenous peoples', must be overturned in favour of equality: a notion strongly entrenched in Indigenous self-determination aspirations.

Given that the historical aspects of a lack of equality, is based upon colonialist sentiment, Indigenous self-determination poses strong arguments in favour of righting previous wrongs and addressing the undermining of Indigenous human rights. Some protagonists' propose the view that this aspect, of Indigenous self-determination, could provide an argument for justifying secession from the existing nation-state.<sup>68</sup>

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<sup>66</sup> Emerson, Rupert, *Self-determination Revisited in the Era of Decolonization*, Occasional papers in International Affairs, No. 9, December, 1964, p.1.

<sup>67</sup> Emerson, Rupert, *Self-determination Revisited in the Era of Decolonization*, Occasional papers in International Affairs, No. 9, December, 1964, p.7.

While Indigenous peoples predominantly experience minority status within their respective traditional countries, minority group aspirations to self-determination differ substantially from Indigenous aspirations. As Lapidoth highlights: the majority of Indigenous self-determination aspirations relate to rights associated with the protection of specific and unique criteria related to the reinstatement and continued preservation of traditional Indigenous cultural priorities, including, the right to economic resources.<sup>69</sup> It is, perhaps the right to economic resources which contributes to concerns regarding the potential for secession.

While the potential for secession has been proposed as a rationale for denying self-determination, as a precaution against the latent possibility of any disruptive act against the state, Lapidoth sees autonomy as a more realistic aim.<sup>70</sup> Lapidoth also introduces the notion that a focus on individual autonomy, a right that allows inclusion in a group by choice, supports the strength of group autonomy in a manner that could not be achieved by enforced membership.

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<sup>69</sup> Lapidoth, Ruth, *Autonomy, Flexible Solutions to Ethnic Conflicts*, United States Institute of Peace Press, pp.16-17, 1997.

<sup>70</sup> The notion of secession as an appropriate method to achieve self-determination has been ruled as inappropriate by the United Nations. Any act that undermines an existing nation state is not supported in current discourse. However, in reality, raising the spectre of secession creates notional elements of concern which may contribute to arguments opposing certain forms of self-determination.

In analysing the positive aspects of autonomy as a form of self-determination Lapidoth sets out a case for internal political compromise that recognises individual rights. Those rights include elements of self-determination within states but rule out secession as a means to achieve self-determination. According to Lapidoth claims for secession rarely succeed, whereas, autonomy can be a useful tool to achieve meaningful dialogue with the state aimed at addressing realistic goals.<sup>71</sup>

The problematic aspect of this proposal rests in concerns regarding Indigenous aspirations. Opposition to Indigenous self-determination claims is often justified by, and grounded in, concerns related to the diminishment or disruption of existing nation states. Such opposition and discussion has impacted upon acceptance of definitions of, and claims for, self-determination. For example: If we utilise broad, common definitions of internal and external self-determination: where internal self-determination is defined as methods of government and external self-determination is defined as freedom from external rule, the difficulty rests in the notion of what constitutes both internal and external rule. From the perspective of many Indigenous groups the predominant stance is that external rule is constituted and imposed by the original invading powers.

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<sup>71</sup> Lapidoth, Ruth, *Autonomy, Flexible Solutions to Ethnic Conflicts*, United States Institute of Peace Press, pp. 20-21, 1997.

At this point two major questions arise. Whose definition or interpretation should be adopted? What circumstances can be said to constitute external rule? If Indigenous peoples interpret alien, or external, rule to mean those who initially invaded their land and non-indigenous persons interpret alien, or external rule, as originating external to the existing nation state, the differing interpretations manifest comprehensive divisiveness of meaning and suggest very significant differences of definitions of self-determination.

In the post de-colonisation period a major divergence in interpretation arose. Various definitions of self-determination began to be differentiated. One of those forms was internal self-determination. While it was generally agreed that there should be freedom from foreign intervention internal groups were beginning to make claims that they should have freedom from internal intervention, referred to as domestic self-determination. Van Dyke claims that a political imperative improves the potential for purity of definition.<sup>72</sup> However, a political imperative may serve to deny many self-determination aspirations.

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<sup>72</sup> Van Dyke, Vernon, *Self-determination and Minority Rights*, International Studies Quarterly, Vol. 13, No. 3, Sept. 1969, pp226-227.

The scope for interpretations of self-determination to encompass more and more specific criteria is a reality and given that each group, or individual, will interpret the concept on the basis of their own need the issue remains problematic. An international definition is also problematic if we accept that, even at this level, any interference in defining group needs could be interpreted as undermining self-determination. If we decide, in relation to Indigenous self-determination, that the aim is, in fact, to rectify past colonialist impacts we may have to accept that external rule, to some extent, is, indeed, able to be defined as imposed by colonising powers: in which case the efficacy of autonomy, as outlined by Lapidoth, is diminished as a potential method.

While autonomy may be a more acceptable premise than secession it cannot meet Indigenous self-determination aspirations in the form discussed by Lapidoth. Referring to the Wilsonian credo Pomerance outlines the predominant western ideology that a democratic government supports self-determination by virtue of the representation of all people within the state.<sup>73</sup> In addition a democratic government is subject to periodic change of leadership and, as such, evolves and changes according to the needs and wishes of the people. This is, a seemingly rational argument, however, such a notion in the Australian context is, arguably, the principle upon which respective governments have consistently justified government policy. Specific programs designed to address Australian Indigenous issues conceived, predominantly by non-aboriginal policy makers, endorsed by government and imposed upon Indigenous communities are inherently non-self-determinative.<sup>74</sup>

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<sup>73</sup> Pomerance, Michla, *Self Determination in Law and Practice, The New Doctrine in the United Nations*, Martin Nijhoff Publishers, 1982, pp38-9.

<sup>74</sup> Aspects of Australian imposition into Aboriginal self-determination by virtue of imposed policy will be discussed in depth in later chapters of this thesis.

The validity of representative government is conceptual: the concept argues that democracy represents all citizens, the reality often fails to achieve such representation. It is proposed that democratic government is supportive of a continuing right to self-determination, however, minority groups within any Nation State may resort to the argument that, as minority groups, they are not represented with any degree of equity.<sup>75</sup> If one adheres to Pomerance's theory the argument may hold with one major flaw for Australian Indigenous people: Aborigines aspire to claim the right to Indigenous self-determination and any external imposition inherently undermines those rights.

Should self-determination be interpreted as a general right, applicable to all citizens of the world, reducible to the level of nationhood as a right and achievable through representative government? If this is the definition applied how would such application afford Indigenous peoples self-determination given the reality that, in general, Indigenous peoples experience poverty of social status and a reduction to the status of second class citizens in their own country: with all the attendant social, health and wellbeing issues that accompany such status. Where in this reality is a sense of self-determination?

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<sup>75</sup> Pomerance's discussion on western versus third world views further outlines this argument. Pomerance, Michla, *Self Determination in Law and Practice, The New Doctrine in the United Nations*, Martin Nijhoff Publishers, 1982, pp38-9

It cannot easily be dismissed that many forms of government are controlled by the elite in society. Australian Indigenous peoples cannot be said, as yet, to elicit any noticeable or tangible influence, or membership, of elite ranks within Australian politics or society: in which case the notion of representative government is, effectively, negated.<sup>76</sup>

Self-determination aims are also subjected to pressure by the notion that everything should be moulded to the state framework. The suggestion is that the political state and its' regulations hold sway over the individual or group. Ronens' view that development and change achieved through representative government may, in reality, be dictated by the elite is a case in point when viewed in conjunction with the fact that, statistically speaking, elite Aborigines in Australia are scarce if not non-existent. Effectively if the elite dictate change Aborigines hold little or no power and thus can not be said to have representative government. The opposing viewpoint would be that the state should represent the wishes of the people and evolve accordingly. It may effectively be argued that the State does in fact develop and change on the basis of elite needs?<sup>77</sup>

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<sup>76</sup> Ronen, Dov, *The Quest for Self Determination*, Yale University Press, 1979, pp.19-20

<sup>77</sup> Pomerance, *Self-Determination in Law and Practice*, 1982, p 38-9

Historically assimilation and integration policies utilised by various Australian governments over time have failed to ensure the self-determination needs of Australian Aborigines and have effectively negated Indigenous self-determination aspirations. The reality, certainly for the majority of Aborigines is a reality of forced control, 'historical destructive processes that undermined and destroyed subsistence and resulted in exclusion', and 'new forms of racism that are culturally and politically based upon the new society's imposition of standards'.<sup>78</sup> If we apply the notion that Australian governments' have evolved to meet the needs of Australian Aborigines we are faced with irrefutable evidence that this has not been the case.

The existence of treaties between colonising powers and Indigenous peoples adds another dimension to the argument. While most see the treaties as binding and feel they should be honoured the lack of a treaty between a colonising nation and an Indigenous group is not a barrier to self-determination. The rationale lies in the pre-existing ownership of the land: sovereignty. This is not extinguished because of colonization: a notion which is in line with Wilsonian views on treaty: requiring that they be upheld. The right to self-determination is not undermined or extinguished by the non-existence of a treaty.

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<sup>78</sup> The more specific ramifications of the imposition of such rationales will be explored further in later chapters.

It becomes obvious that any discussion, or implementation, of self-determination must also take account of conflicting rights/claims. While each self-determination claim must be addressed individually it is important to remember that self-determination stems from a call for equality for all and, in effect, political hierarchy must be set aside to effectively afford true equality. There are evident differences between international definitions articulated within the United Nations and other ideas of what self-determination does, or should mean, and those differences continue to be debated. Concerns exist that any document will be an international legal document allowing governments to justify policy based upon that definition of self-determination.

Given the indication of differential perceptions of what self-determination should be this poses potential risks that any international definition could subvert the real self-determination of specific Indigenous groups.<sup>79</sup> In order to delineate the parameters of self-determination used as a methodology within this thesis it is necessary to decide upon a specific viewpoint upon which to progress the argument.

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<sup>79</sup> Foster, Caroline, E. *Articulating Self-determination in the Draft Declaration on the Rights of Indigenous Peoples*, EJIL (2001), Vol. 12, No. 1, p 150

In this case I turn to Werther's evaluation of the principles of self-determination. Werther assesses the development self-determination while taking account of the impact of self-identification rather than imposed identification. In this way Werther highlights the need to utilise a non-ascriptive form of assessment. In doing so, one of the points under assessment is how self-determination has empowered some of the most underprivileged groups of peoples in the world. In addition, Werther's analysis of these changes includes the realisation that an assessment of self-determination is best undertaken across a range of disciplines in order to be more comprehensively investigated.<sup>80</sup>

For the purpose of this research I would ascribe to Werther's views on definition and respond accordingly by attempting to avoid prescriptive notions of definition and seek, instead to outline claims and responses to claims. In particular, by attempting, to align comparisons to internal perspectives rather than relying on external or imposed ascriptive criteria. As Werther points out,

"...there is no a priori moral, theoretical, or practical reason to let outsiders define groups."<sup>81</sup>

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<sup>80</sup> Werther, G. *Self Determination in Western Democracies*, Aboriginal politics in a comparative perspective Contributions in Political Science, Number 302, Greenwood Press, 1992. p2.

<sup>81</sup> Werther, G. *Self Determination in Western Democracies*, Aboriginal politics in a comparative perspective Contributions in Political Science, Number 302, Greenwood Press, 1992. p2.

On acceptance of this premise any discussion regarding Indigenous self-determination must be based upon a particular individual group's self-definition and must, likewise afford respect for the basis of respective Indigenous claims.

Given the complexity of self-determination as a right, particularly, as a law or definition in an international sense, it may be that self-determination, as a right, should be guided by an agreed set of principles inherent to that right. These guiding principles may provide the framework for regional negotiation and take account of the inalienable rights of others. With regard to the ongoing international discourse two pertinent and opposing viewpoints continue to be argued. These viewpoints, simply put are: firstly, should self-determination be governed so stringently that, once achieved, no further claim is possible or essential, or the perspective that views self-determination as an ongoing, dynamic, right, just as equality is.

The success of Indigenous self-determination claims rests on acceptance of the premise that Indigenous peoples' have the right to equality within their own territories, states or nations. Conflicting rights arise, predominantly because of non-indigenous concerns in relation to ownership of resources. Self-determination has become an ideological and linguistic quagmire. Yet the principles of self-determination are clear: the right to self-government and equal rights. The query at the centre of the ongoing international discourse is: how far should the argument be taken?

Despite the necessarily brief discussion, as regards definitions of self-determination, it is apparent that a number of complexities are intrinsic to any clarification of the concept and decisions as to implementation. Having, effectively ruled out any notion of secession, identified issues in relation to autonomy and representative government, highlighted the importance of treaties with Indigenous nations and chosen a non-ascriptive form of assessing Indigenous self-determination aspirations we can now turn to a discussion related to the aspirations of Aboriginal Australians to achieve Indigenous self-determination and the variety of Australian government responses to those aspirations.

## Chapter Four: The Land Rights Battle

Aboriginal resistance in Australia is documented and evidenced relatively comprehensively. Examples of which include: guerilla warfare, petitions for land, the formulation of Aboriginal organisations, legal claims for land or by the spiritual and cultural pride exhibited in the face of consistent denial of identity and existence. These examples of resistance occurred in direct opposition to government policies, such as, child removal, assimilation, segregation and, latterly, the northern Territory intervention.<sup>82</sup>

After more than two hundred years of resistance it is obvious that Aboriginal Australians refuse to relinquish their collectively inherent rights to recognition as first nation peoples. Indigenous self-determination claims and aspirations attest to this ongoing struggle. This is a struggle that is unlikely to cease regardless of the pressures imposed by respective governments. Regardless of related policy implementation and legislative impositions and/or political or public disempowerment by selected elements of mainstream Australian society.

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<sup>82</sup> The Northern Territory Intervention is discussed in more in-depth detail in a subsequent chapter.

Indigenous self-determination rights can be said to have become part of the collective consciousness of many Aboriginal Australians and, as with notions of sovereignty and first nation status, cannot simply be legislated away. The reality of not affording Indigenous self-determination cannot cause the perceived 'problem' to disappear. The strength with which Indigenous individuals, groups and communities have maintained the now generational struggle for recognition and agency is evidenced not only by the continued existence of distinct Aboriginal communities. It is also inherent in the events and tactics employed to overcome the range of attempts to dismantle, deny and assimilate Aboriginal people and communities. Examples of which are evident in individual protests such as those conducted by Anthony Martin Fernando in the nineteen twenty's and thirty's to the freedom rides, the tent embassy and the formation of the Aboriginal Provisional Government. Aboriginal people have collectively and singularly emphasised their ongoing commitment to self-determination. One of the most significant tactics in this ongoing struggle has been land claims.

Analysis of land claims highlights a thematic approach central to elements of the analytic concepts of this thesis, namely: the differentiation between democratic governmental processes in comparison with Australian Aboriginal organisational and regional processes. According to Goodall it is possible to identify differing Aboriginal 'tactics' and the development of 'widespread phenomenon' without the existence of a nationally 'organised body'.<sup>83</sup>

Aboriginal land claims can be said to have been formulated in a cultural context utilising strategies that were available in relation to respective claims, such as: enlisting assistance from empathetic non-aboriginal persons', direct communication with government/s and utilising purchase options.<sup>84</sup> Traditional Indigenous systems include reciprocity and solidarity: which Barkan categorised as humanist and communitarian systems.<sup>85</sup> What could be seen as a challenge in these circumstances is maintaining cultural integrity while attempting, through necessity, to engage in systems politics which are essentially external to cultural norms. This occurrence is not so much an issue in terms of how Indigenous people may view the situation but rather in terms of external perceptions (often utilised to demonstrate the weakening of Indigenous traditional adherence).

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<sup>83</sup> Goodall, Heather, *Terrible Hard Biscuits: Land in our own Country: the Aboriginal land rights movement in South Eastern Australia, 1860-1914*, Edited by Chapman, V & Read, P., Allen & Unwin, 1996, p. 171.

<sup>84</sup> I refer, in this instance, to the cultural context of utilizing available resources to achieve needs.

<sup>85</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 163.

Indigenous nations have evolved out of necessity to assume the responsibility of asserting sovereignty and self-determination rights purely to survive and ironically to protect cultural integrity.<sup>86</sup> In Australia, a number of events serve to highlight and affirm Aboriginal Australian resistance to mainstream efforts to absorb Aborigines into the majority cultural mélange. One significant example is the Aboriginal Tent Embassy of 1972 arising from the failure of the Bark Petition presented to Parliament in an effort to stop the mining of bauxite on sacred land.<sup>87</sup> The resulting Aboriginal Land Act (Northern Territory) 1976 is described by Barkan as a diluted version of self-determination, namely, self-management.<sup>88</sup>

The Aboriginal Embassy, 1972, represents a visible and powerful account of Aborigines expressing the right to self-determination. It was an event that increased public and political awareness of Aboriginal perspectives and of the distinctiveness of Aboriginal cultures in Australia: in direct response to the continuing assimilation policies of governments and, eventually, the imposition of imposed criteria attached to minimal land rights concessions.

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<sup>86</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 162.

<sup>87</sup> Barkan, *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 239.

<sup>88</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 239.

A significantly organised, and public, Indigenous self-determination claim is evident in the events of the 1972 protests on the lawns of parliament: the birth of the Aboriginal Tent Embassy. The aspirations expressed included freehold title to land and resources to support the growth of economic development. The unprecedented media attention finally brought Aboriginal issues into public view on a grand scale.<sup>89</sup> The demands outlined in the 5 point plan laid claim to Aboriginal ownership of all existing reserves and settlements, land in capital cities, preservation of sacred sites across the country, six million dollars in compensation and rights to statehood for the Northern Territory.<sup>90</sup>

The initial government response was to impose new penalties for camping in public places. A seemingly simplistic and offensive approach couched in legislative and policy alterations which did nothing to address the claims of Aboriginal people, rather the response ignored the claims in a manner dismissive of the magnitude and solemnity of the claims. The response was more reminiscent of the chastisement of naughty children and highlighted the dismissive attitude of government towards the rights of Aboriginal peoples by failing to acknowledge the *actual* claims in any way. Police action to uphold these new penalties effectively ended six months of peaceful protest on 20/7/1972.

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<sup>89</sup> Robinson, Scott, *Terrible Hard Biscuits: The Aboriginal Embassy: an account of the protests of 1972*, p 246

<sup>90</sup> Robinson, S, *Terrible Hard Biscuits: The Aboriginal Embassy: an account of the protests of 1972*, p 246

The heavy handed tactics of government and police did nothing to stem the call for land rights and Aborigines and supporters rebuilt the Embassy tents on 23/07/1972. This attempt also met with police action. By the third attempt to reinstate the Tent Embassy approximately 200 Aborigines and supporters were present: a significant rise in numbers compared to the first two attempts. The violence of those initial attempts to dismantle the embassy led to concerns that increased levels of violence would arise if there was to be a third attempt to disburse the Embassy.

Negotiations saw the parties (Aborigines and police) enter into the spirit of symbolism and police dismantled the tents without violence while allowing the protestors to stay. It is, perhaps the dignity of the innovative, symbolic and non-violent approach to claims for land that perpetuates the memory of the achievements of the Tent Embassy.<sup>91</sup> The actual outcomes are less quantifiable with the notable exception of the Aboriginal Land Act (Northern Territory) 1976 where demands were partially met and represented immeasurable ideological changes in government and public perception in regard to Aboriginal perseverance and the calls to achieve equity, land rights and self-determination.

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<sup>91</sup> Robinson, S, *Terrible Hard Biscuits: The Aboriginal Embassy: an account of the protests of 1972*, p 260

The political pressures Aborigines face are profound and positive results are often transitory: struggles to achieve advancement with one Government can be overturned with a change in Government or a change in majority public opinion: a case in point is the reaction to the Mabo Supreme Court ruling.

The High Courts rejection, in 1993, of the notion of terra nullius and the consequent reality of associated Indigenous native title rights opened a floodgate for land rights claims and challenged the legal and ethical principles upon which the Australian nation was founded. Despite the intricacies of the decision what is of interest in the case of this thesis is the measures of control applied to the granting of the rightful return of land and the guidelines imposed for usage of that land. In comparison with First Nations American peoples those impositions serve to reduce and control the level of self-determination whereas in the USA no such guidelines were imposed.

As highlighted in Don Russell's speech, *The Role of Private Property: Can we do better for Indigenous Australians?*, delivered on the 15/09/2005<sup>92</sup>, the lack of imposition of external guidelines and legislation has served to ensure that many Native American communities have been enabled to achieve economic independence: an important facet of self-determination.

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<sup>92</sup> Appendix 1, Russell, Don, *The Role of Private Property: Can we do Better for Indigenous Australians*, 15<sup>th</sup> of September, 2005.

In Australia, not only are Indigenous communities subjected to external nation-state controls, but they are also subjected to inflammatory public debates reliant in many cases on outmoded notions of Indigenous inferiority.

The controversy surrounding the High Court decision raised the level of acceptability of racist comment in popular media for certain sectors of the Australian public. It became acceptable, for some, to raise, once again, issues of 'supposed' racial inadequacy as an argument for moral superiority: in the face of a perceived potential for material loss. It seemed, for some, the best way to subvert this potential was to denigrate and vilify Aborigines. Those commentators grasped at antiquated notions of biologically determined inferiority to support their claims.<sup>93</sup> When reasonably assessed such notions are inherently linked to prejudice and stereotypes and afford little or no opportunity for the members of the, supposedly inferior, group to remove the imposed shackles of applied notions of inferiority as a claimed, inherent element of identity.

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<sup>93</sup> Markus, Andrew, *In the Age of Mabo Between Mabo and a hard place: race and the contradictions of conservatism*, 1996, p.97.

The public debate post Mabo decision included a variety of themes, not least of all, the proposed notion that the decision could lead to the fracture of the Australian nation. Such views were accompanied by outspoken fears that freehold title was at risk, the nature of government was subject to new challenges which could again result in the diminishment of the nation and that the High Court had acted as an unelected parliament.<sup>94</sup>

Essentially the pedantic aspects of the debate relating to the High Court decision rested upon the role of the High Court and differing interpretations of what that role may be. The decision was seen by some as an extension of the High Court powers which in effect could cause a constitutional crisis: such was the hysteria of the time.<sup>95</sup>

In defense of these negative attitudes the re-emergence of Social Darwinist type explanations erupted into the public arena via the media and a variety of commentators. The Mabo debate polarised rhetorical and racist comment in the public debate utilising essentialist arguments of biological determinism to undermine Aboriginal rights to land in the face of the High Court ruling. The spectre of assimilation was raised as a yard stick for equality.

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<sup>94</sup> Markus, A., *In the Age of Mabo: Between Mabo and a hard place: race and the contradictions of conservatism*, 1996, p 94.

<sup>95</sup> Markus, Andrew, *In the Age of Mabo: Between Mabo and a hard place: race and the contradictions of conservatism*, 1996., p 91.

Aborigines, some felt, had no right to differential consideration, they should only have access to the same rights as other Australians: never mind that Aborigines represented the most disadvantaged group in Australia.<sup>96</sup>

The main element of the discourse was focused on the perception that any rights afforded Aborigines would somehow detract from or diminish the ownership and property of other Australians. As Andrew Markus states,

‘the Mabo debate was about maintaining the position of vested interests.’<sup>97</sup>

Markus also makes the claim that:

‘The disparaging of Aboriginal culture as indicative of weakness, a reflex reaction to the weakening of the critics’ position: it may also have been a calculated move, at least on the part of some, seen as useful in maintaining standing within a section of the electorate and a valuable, if potentially counter productive tool in the ongoing battle for moral ascendancy.’<sup>98</sup>

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<sup>96</sup> Markus, Andrew *In the Age of Mabo: Aborigines and Australia*, pp88-99

<sup>97</sup> Markus, A., *In the Age of Mabo: Aborigines and Australia*, p99

<sup>98</sup> Markus, A., *In the Age of Mabo: Aborigines and Australia*, p99

The debate surrounding the issues also brought forward many supportive interpretations with some seeing the outcomes as positive for the country and Aborigines. Bain Attwood asserts Mabo as a turning point in Australian historical discourse. Mabo represented acknowledgement, external to Aboriginal communities', of continued Indigenous rights: by recognising the 'illegal' dispossession of Aborigines. According to Attwood the comfort derived from the terminology and discourse of white history in Australia, the notion of settlement, was disrupted by recognition of the invasion terminology.<sup>99</sup>

Key to the events, and controversy, surrounding Mabo was the 'fear factor' ascertained and touted by many as undermining the legitimacy of Australian history: or re-writing history.<sup>100</sup> An Aboriginal understanding of history, by comparison, is not confined to the past 200 odd years. History on this continent is far more substantial and the past 200 years is a white history and the High Court decision relegated that history to an interpretation representing the story of attempted dispossession of Aborigines, rather than the previously tidy and non-confrontational concept of colonisation of an empty land.

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<sup>99</sup> Attwood, B., *In the Age of Mabo: Mabo, Australia and the end of History*, p101.

<sup>100</sup> Attwood, B., *In the Age of Mabo: Mabo, Australia and the end of History*, pp103-04

The electorate was officially divided and, a range of propaganda asserting the perceived negative potential losses to the average Australian citizen, were frequently and loudly proclaimed. All, it would seem, as a response to the reactive fear aroused by the Mabo decision. Notions such as inferiority, stone-age culture and the supposed 'backward' nature of Australian Aborigines and Aboriginal cultures were openly and publicly espoused.<sup>101</sup>

It is a sad indictment of Australia as a nation that many of those notions of inferiority continue to exist in some quarters and that Aborigines continue to be asked to justify not just their cultural adherence to tradition but also their right to equality and equity in their own land. However, there have been political shifts which supported Aboriginal self-determination, equality and equity to some degree: albeit shifts too short-lived to enable lasting outcomes or to effectively and comprehensively educate the nation with regard to Aboriginal capacity.

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<sup>101</sup> Markus, Andrew, *In the Age of Mabo: Between Mabo and a hard place: race and the contradictions of conservatism*, 1996, p 93.

Barkan sites the Labor party's election in 1972 as the beginning of 'restitution' by virtue of 'the first legislation and land rights for Aborigines'.<sup>102</sup> The 1976 Aboriginal Land Act (Northern Territory) while affording a greater degree of efficacy to Aboriginal land claims was limited in its implementation as it denied Aboriginal rights to investigate economic activities such as mining and was restricted to traditional usage only.

Other state and Territory attempts to expand the Act to include the rest of Australia failed in the 1980's.<sup>103</sup> Effectively these policy shifts did not afford Indigenous self-determination in relation to land rights as the application of the Act was restricted to the Northern Territory. As Barkan states the Hawke Government experienced pressure from mining companies which resulted in a shift away from Aboriginal rights and effectively ended discussions of a treaty with Aboriginal nations.<sup>104</sup>

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<sup>102</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 234.

<sup>103</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 239.

<sup>104</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 239.

The Mabo decision, while a landmark decision in many ways, was not a decision which afforded land rights *carte blanche* to Aborigines. The reality of alienation eventually arose and subsequently diminished by law many potential land rights claims. Alienation included mining and disrupted occupation by Aborigines. Essentially, Aboriginal communities forced to leave traditional lands were excluded from taking action under the decision as their traditional lands were considered to be alienated.<sup>105</sup> This of course denies the notion of restitution, however, it was deemed that native title co-existed with pastoral leases and the Labor Government discussed restitution for alienated native title. As we know this did not occur as the Government was defeated in 1996 and the Liberal party under John Howard came into power.

The advances apparent through the Whitlam, Hawke and Keating years were subsequently diminished during the Howard Government tenure: particularly in relation to land claims. There emerged a noticeable negative shift in attitude toward Aboriginal issues, aspirations and rights. The Mabo case signifies a relatively well publicised event: an event which attempted to deal with a significant Indigenous aspiration. The subsequent nationwide debate represents perhaps one of the most telling examples of Australian, mainstream, ideologies and their impact on Indigenous aspirations.

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<sup>105</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 241.

In fairness it is untenable to apportion any percentage to the level of mainstream negative ideologies. However, the events and outcomes of the Mabo decision provide a platform from which to elucidate the level of applicable negative stereotypes attributed to Aboriginal people in Australia. In addition these events have highlighted the nature of entrenched notions of Indigenous inferiority as those opposed to supporting Indigenous aspirations drew heavily upon notions of Indigenous inferiority in order to support opposition to Indigenous requests. The significance of the statements/claims is to highlight the perpetuation of eurocentric/ethnocentric perspectives that historically, and contemporarily, colour and distort perceived notions applied to the public view of Aboriginal Australians.<sup>106</sup>

Political leaders such as John Howard and Tim Fischer essentially publicly espoused racist views that supported the views of the more prejudiced and bigoted elements of Australian society by effectively affording legitimacy to those views. Many of the elements of the public debate related to the ongoing vilification of Aborigines and the denial of a deep and lasting Aboriginal heritage.<sup>107</sup>

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<sup>106</sup> Mention of One Nation is anathema to this writer but sadly the momentary success of One Nation (and Pauline Hanson) elicits necessary and documented recognition of the  
<sup>107</sup> Inherently racially based fears held by too many Australians during this time in our shared history.

The issues of land and resource ownership raised by the High Court decision promoted the spectre of fear related to greed and loss but also the fear that Aborigines, with the attainment of resources, may command more political empowerment. Aboriginal affluence could result in an otherwise politically dis-empowered section of the community gaining power by virtue of the potential control of resources. Such is the political reality that those who control essential resources may exert political power simply by virtue of ownership of those critical resources. Placation of Aboriginal aspirations may well be the result of that attainment of affluence. Too many political and business interests feared this potential reality and the notion that the High Court decision supported the veracity of Aboriginal ownership of land and resources coveted for the richness of mineral deposits.

The key questions in relation to Aboriginal sovereignty and ownership included: was the land occupied, owned and governed. Legal protagonists in the debate were divided on these questions. The High Court returned the majority decision that terra nullius was a myth.

Terra nullius had been used as justification for acquiring the land. Henry Reynolds interpretation of a range of legal outcomes identifies an incongruity worthy of mention, namely: that, in Australia, the annexation of land by the, so called, conquering nation absorbed all of the nations land mass with no recognition of prior ownership. Whereas the usual outcome of war-like tactics generally only resulted in a change of sovereignty and personal land ownership was unaffected.<sup>108</sup> Effectively, in the case of the Murray Islanders, and by default, Aborigines, Reynolds argues,

‘They lacked the normal protection of the British subject faced with the ‘inundation of the prerogative’ because on annexation the Crown could choose not to notice their property rights.’<sup>109</sup>

The injustice of such appropriation of land and the resulting lack of legal right and protection is in itself a unique circumstance and one which has yet to be righted. For all intents and purposes Aborigines and Islanders’ were outside the protection of the invaders law: a fact incongruent with international legal parameters and history. Despite the moral realities of the Mabo decision which recognised prior communal ownership by Indigenous Australians the hysteria aroused by that decision afforded little weight to the moral realities.

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<sup>108</sup> Reynolds, Henry, *In the Age of Mabo: Native Title and Historical Tradition: past and present*, 1996, pp 20-1.

<sup>109</sup> Reynolds, Henry, *In the Age of Mabo Native Title and Historical Tradition: past and present*, 1996, pp 21.

The dismissal of early reports attesting to Aboriginal land ownership and rights was tantamount to re-writing history to accommodate the blinkered views supportive of continuing the disinheritance of Aborigines. The complex nature of the battle to deny Aboriginal sovereignty and ownership encompassed a myriad of interpretations, both historical and contemporary, regarding the nature of ownership and the nature of Aborigines. Sadly, the resulting propaganda war continues to live in the consciousness of Australians who are comfortable in their view of Aboriginal inferiority.

Notwithstanding earlier attempts to disinherit Aborigines the Mabo decision was consequently weakened further by John Howard in his Wik 10 point plan. Just as the outcomes of the Tent Embassy denied Aboriginal aspirations so too was the High Court Mabo decision subjected to external guidelines which effectively, legally extinguished native title across much of Australia and imposed stringent guidelines with regard to future land rights claims.

According to Markus, the 'heated debate' surrounding the Mabo decision was partly fuelled by 'the lodging of a number of extensive land claims by Aboriginal groups'.<sup>110</sup> Much is written about the manifestations of opinions regarding the High Court decision and Mabo, much is predicted about the ramifications of recognising Aboriginal sovereignty and the affording of land rights to Aborigines. There is now a proliferation of opinion on both sides of this new political fence.

The Native Title reforms and the 10 point plan introduced by the Howard government sought to:

'extinguish native title on various types of land, including where it conflicted with the rights of pastoralists, to limit the time native title can be claimed to six years, and to reduce Aborigine rights to negotiate over mining leases.'<sup>111</sup>

Six years to implement a claim, diminished negotiating rights and, in some circumstances, no rights at all. Amid the hysteria surrounding the potential legal rights of Aborigines in Australia the Government sought to legally reduce, diminish and deny Aborigine rights, particularly in relation to the potentiality of economic resources, by restricting negotiating powers.

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<sup>110</sup> Markus, A, *In the Age of Mabo: Between Mabo and a hard place: race and the contradictions of conservatism*, 1996, p 88.

<sup>111</sup> Barkan, Elazar, *The Guilt of Nations*, W.W. Norton and Co, New York, 2000, p 242.

As outlined in previous chapters Indigenous self-determination can only be truly realised by access to economic independence and Nation states have a responsibility to ensure such outcomes in relation to colonised Indigenous peoples'. It should be noted that, at this point in time, Australia abstained from supporting the Draft Declaration of the Rights of Indigenous Peoples. Consequently international expectations were not, as yet, a binding expectation. Once again we see Aborigines subjected to external pressures which efficiently and legally, if not morally and ethically, consistently reduced Aboriginal rights: adding to the growing number of impositions which create a barrier to Indigenous self-determination.

Negative protagonists' proffered doomsday messages and resorted to vilification of Aborigines as a form of defense against the predicted dismemberment of the Australian Nation. In response Aborigines reiterated their own notion of sovereignty, ownership and self-determination by lodging a range of land rights claims.

The Aboriginal Tent Embassy served to bring Aboriginal issues more definitively into public view. The Embassy, while not fully achieving all of its' aims, forced the implementation of the Aboriginal Land Rights Act (Northern Territory) of 1976. The events of the protest may also be attributed to a new national consciousness, ultimately leading to the subsequent Reconciliation model in Australia.<sup>112</sup> Aboriginal issues and the adoption of Aboriginal culture by mainstream Australia fed into the emerging notion of multiculturalism. The acceptance of Aboriginal diversity of culture, richness of heritage and distinctive history began to be adopted as a valued segment of Australian society.

The transitory nature of Aboriginal advancement in Australia was comprehensively apparent in the new Howard regime and the weakening of Aboriginal Land Rights post Mabo. In addition the rise of the insidious beliefs and platforms of the One Nation Party which fostered and supported growth of racially based politics in Australia. This is effectively a shameful period in Australian political history with the renewed advent of public vilification and racial stereotyping which was not only tolerated but accepted as an appropriate commentary on Aboriginal people, issues and rights. Where-by we began to witness the re-emergence of 'blame-the-victim' mentalities as explanations for the ongoing

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<sup>112</sup> Discussion of Reconciliation is undertaken in Chapter six: Governance and Decision-making.

social disadvantage of Aborigines: ultimately setting the scene for the implementation of the Northern Territory Intervention.

So it is that approximately thirty five years after the Aboriginal Tent Embassy we see the advancement of land rights in the Northern Territory subject to new invasive policies which threaten to undermine and dispossess Northern Territory Aboriginal communities under the guise of closing the gap on health and education inequities.<sup>113</sup>

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<sup>113</sup> See Chapter seven: The Northern Territory Intervention.

## **Chapter Five: Governance and Decision-making Processes**

Aborigines continue to face the immense task of fighting for self-determination in a country where political support is not demonstrably available. The complex legal, moral and ethical issues that have shaped policy development in Australia over time outline the battle faced by Aboriginal Australians in the quest to achieve Indigenous self-determination. The forward trends towards Indigenous self-determination achieved from 1972 – 1996 suffered dramatic reversal during the Howard Government tenure. The Native Title Act was one of the major factors in the Liberal party electoral victory. The divisive nature of Australian opinion on Aboriginal issues was an effective electoral platform with regard to Native Title reform. If we seek positives from that circumstance it at least highlights a greater awareness, if not wholesale acceptance, of Aboriginal aspirations, claims, rights and sovereignty. After the Liberal party electoral victory the first major indications of what lay ahead for Aborigines in Australia were Howard's Native Title reforms and the Wik 10 point plan.

Differing opinions were not restricted to non-indigenous Australians' as there was also a degree of diversity of opinion in Aboriginal communities as well. Although those differences of opinion did not debate the veracity of rights to land, rather, Aborigines debated the degree to which co-operation and collaboration with industry and governments would effectively undermine self-determination and how any resource outcomes, as a result of land returns, should be managed and shared. This discourse, according to Barkan, led to the increased criticism of the Aboriginal and Torres Strait Islander Commission (ATSIC) as the commission was in an often untenable situation: placed as it was, in the role of arbiter for Aboriginal agency in the decision-making process.<sup>114</sup>

While Native Title reform and the 10 point plan had significant ramifications for Indigenous self-determination in Australia they were by no means the only events which denied and undermined Aboriginal rights. There were a number of initiatives implemented by previous governments which were designed to improve Indigenous status and promote equity in decision-making processes in Australia. Examples of which include the ten year reconciliation process and the formation of the Aboriginal and Torres Strait Islander Commission (ATSIC), which was the first ever elected representative Aboriginal body: at least the first ever to represent Aboriginal aspirations at a national mainstream level.

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<sup>114</sup> Barkan, Elazar, *The Guilt of Nations*, W.W. Norton and Co, New York, 2000, p 243.

The empowerment evident in ATSIC rested, at least partially, in the representation at local level as each state had regional representatives. This ensured a more comprehensive articulation of the regional and diverse requirements of Aboriginal communities. While ATSIC during its existence suffered criticism for various reasons the importance of the commission cannot be dismissed. The accomplishment of the level of Aboriginal empowerment at a national level, the increase in public awareness of Aboriginal aspirations and the not insignificant development of Aboriginal capacity, governance and national organisation proved immeasurable. The era of ATSIC remains an era of progression and hope never before experienced, collectively, by Aboriginal Australians when viewed in conjunction with other strategies in place at the time.

Throughout the Hawke and Keating years a variety of supports for progressing Aboriginal social justice and human rights occurred (not withstanding more holistic and progressive support for a range of socio-economic and health and well-being strategies). The growth of Aboriginal empowerment from 1972 – 1996 is demonstrated by Aboriginal voices in the form of such vocal advocates as Michael Mansell, Patrick Dodson, Lowitja O'Donoghue, Jim Everett and Noel Pearson: to name but a few.

The emergence of these and other strong, Aboriginal voices attests to the growth of recognition that Aborigines needed to fight for self-determination on a range of fronts and thus we see the emergence of educated Aborigines committed to articulating Aboriginal aspirations. Conversely many of those educated Aborigines were subjected to claims that their respective and individual Aboriginal identity had been weakened by virtue of their educational attainments and their representation of Aborigines was questioned.<sup>115</sup>

There was, however, a degree of political support for Aboriginal aspirations and progressive land rights processes evident during this period in government policy. According to Barkan new notions of Australian multiculturalism supported this shifting awareness of differential rights, including Indigenous rights, at both government and public level.<sup>116</sup> With the advent of Liberal government and the consequent change of supportive government ideology the eventual abolition of ATSIC, the diminishment of CDEP, the introduction of Shared Responsibility Agreements (SRA's), the mainstreaming of Aboriginal specific services and the Northern Territory Intervention, now referred to as Closing the Gap NT, all had dramatic effects on Aboriginal agency and reversed many advances towards the eventual attainment of Indigenous self-determination achieved in the preceding decades.

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<sup>115</sup> Tatz, Colin, *Race Politics in Australia*, The University of New England, 1979, p 10-12.

<sup>116</sup> Barkan, E., *The Guilt of Nations*, W.W.Norton & Co. New York, 2000, p 234.

The Regional Meeting of Indigenous Peoples on the World Conference against Racial Discrimination, Xenophobia and Related Intolerance, hosted by ATSIC in Sydney, 2001, and the published record of proceedings outlines many of the significant issues faced by Indigenous peoples, both internationally and in Australia. The publication highlights the lack of advancement of Australian Indigenous self-determination aims and encapsulates a range of recommendations vital to achieving those aims: recommendations which were, essentially, unmet at the time.

It is difficult to investigate the recent political decisions relating to Aborigines with a view to ascertaining positive Indigenous self-determination outcomes. The reality is that Aboriginal rights are treated, consistently, as secondary rights wherever there are conflicting interests. As Barkan illustrates this is the case even in relation to the Greens party who, while somewhat supportive of Aboriginal rights, view those rights as secondary to environmental needs as per a Green Party interpretation of what the environment needs.<sup>117</sup>

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<sup>117</sup> Barkan, Elazar, *The Guilt of Nations*, W.W. Norton and Co, New York, 2000, p 243.

Effectively, Aboriginal rights have no substantial inalienable political support. Liberal policy consistently undermined Aboriginal rights while Labor reneged on promises due to corporate pressure and the Greens had a somewhat polarised view of environmental needs that did not recognize Aboriginal responsibility to land and the efficient and sustainable methods implemented over tens of thousands of years. Without domestic political support Australian Aborigines are forced to seek international support from peak bodies and individuals, such as the United Nations High Commissioner of Human Rights.

In 2001 the Regional Meeting of Indigenous Peoples on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Sydney was hosted by ATSIC. The event and the outcomes of the conference were published in 2001. In the publication it is asserted that, since the 1993 conference, Australia has made no meaningful progression towards affording Indigenous self-determination. To oversimplify, Australian governments have not been able to overcome institutionalised perspectives that apportion blame, advocate protection or impose band-aid solutions that throw money and welfare services at problems but that rarely afford Aboriginal communities any level of empowerment. Respect for Aboriginal aspirations is minimal, perhaps, predominantly because there are minimal forums for inclusion in decision-making processes which results in policy that

cannot take account of Aboriginal perspectives and is therefore destined to fail.

Australian governments continue to measure the success of Aboriginal programs against successful outcomes for non-indigenous Australians. Invariably the programs do not address any Aboriginal social, spiritual and cultural aspects of Aboriginal well-being. Successes continue to be measured against non-indigenous outcomes as, in their wisdom our respective governments believe that equality means access to the same service for everyone.<sup>118</sup> History has shown that such an approach creates disadvantage when majority cultures dictate policy those policies often not only don't meet minority needs but often add to current disadvantage.

The decision to move away from the provision of 'same' services may seem to be a positive development however, in the case of Australia that decision has lead to greater negative imposition of xenophobic and racially based programs which do not incorporate Aboriginal decision-making processes.

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<sup>118</sup> Davis, M., *Indigenous Peoples, Racism and the United Nations: Mandatory Sentencing and the Myth of the Fair-go*, 2001, p 105.

With the implementation, by the Federal Government, of arguably assimilationist legislative impositions Aboriginal agency continued to be subjected to extreme external pressures. The 2005 Social Justice report outlines two issues of major concern for Aboriginal and Torres Strait Islander peoples. They are improving health status and Indigenous affairs at national level, in particular, how the 'new arrangements' seek to ensure Indigenous participation in decision-making processes.

In 2004-05 ATSIC was dismantled and new processes or 'government machinery' was implemented.<sup>119</sup> According to the Social Justice Commissioner there are immediately recognisable positives which arise from the dismantling of ATSIC. For example: governments can longer rely on ATSIC to take the blame for failures, perceived or real. The onus now rests on various levels of government to achieve outcomes through shared responsibility agreements.

The abolition of ATSIC has been possible because it is an Indigenous elected body. The general public perception of what is occurring remains uninformed. The nature of ATSIC and its role as an Indigenous voice is perhaps not fully recognised.

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<sup>119</sup> Calma, Tom, *Social Justice Report*, HREOC, 2005, p1.

Williams' point of comparison is warranted, the Australian public would be outraged if the government abolished any other duly elected representation without requisite investigation, reason and appropriate replacement.<sup>120</sup> These actions by the government are a clear indication of a mindset determined to deny Aboriginal self-determination. As Williams states,

'What we are seeing from the Howard government is the most comprehensive and discriminatory 'white-outs' of the limited democratic rights to representation and a say in the decisions that affect them ever effected against a particular group of Australian citizens since colonization.'<sup>121</sup>

The implementation of the 'new machinery' by the Howard government is purported to encourage a direct relationship between government and Aboriginal peoples. According to Tom Calma current government initiatives draw a line under the past in relation to Aboriginal affairs. The negative outcomes include the relegation of ATSIC to memory with the added infamy of being a failed initiative and attributed with little or no success. Effectively, those ATSIC programs that may have achieved some advancement for Aboriginal peoples suffer the same fate and are relegated to a negative historical memory.

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<sup>120</sup> Williams, R., *The Senate must act to stop the erosion of Indigenous representation*, <http://www.eniar.org/news/Williams.html>, 11/03/2005, p. 1 of 4.

<sup>121</sup> Williams, R., *The Senate must act to stop the erosion of Indigenous representation*, <http://www.eniar.org/news/Williams.html>, 11/03/2005, p.1 of 4.

In reality ATSIC was not the only body overseeing Aboriginal affairs and, as stated by the Commissioner,

“The reasons for failures in the past to improve the life circumstances of Aboriginal and Torres Strait Islander peoples are more complex than those that can be fairly attributed to ATSIC - Aboriginal and Torres Strait Islander health is a perfect illustration of this – an area of government activity over which ATSIC had no responsibility since the mid – 1990s and in relation to which there has been no consistent forward trend over the past decade,”<sup>122</sup>

In addition to this negative trend in the post ATSIC era the new processes assume direct interaction between governments and Aboriginal communities with the view that this ‘direct’ interaction will facilitate Aboriginal participation in decision-making processes. Amid the range of new protocols and processes is the added stress for Aboriginal peoples to deal with a broad range of Aboriginal specific and mainstream service reforms. There is an unrealistic expectation that Aboriginal communities will accommodate the new processes, cope with the additional mainstream changes and develop the capacity to interact with governments in an informed and empowered way with no provision for capacity building at local level.

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<sup>122</sup> Calma, Tom, *Social Justice Report*, HREOC, 2005, p2.

The inherent dangers exist in the propensity for vulnerability of Aboriginal communities where interactions involve government representatives with informed capacity. In order to ensure the human rights of Aboriginal peoples in these interactions there must be mechanisms to address this potential. According to the Commissioner, current government policy has neglected to address this feature.<sup>123</sup>

Self-determination should have a focus on individuals within the context of group affiliation. Policy development at national level has failed consistently to meet this criteria. Given the diversity of Aboriginal communities – both geographically and in terms of diversity of views, needs and experiences – it is warranted that there is a requirement for either a more targeted approach or a recognition that all Aboriginal policy be grounded in local capacity building and empowerment models. This approach would seem essential to a basic foundation upon which to support and afford the growth and development of Indigenous self-determination in Australia.

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<sup>123</sup> Calma, Tom, *Social Justice Report*, HREOC, 2005, p3.

That such policy development is, not only, not a reality, but it can legitimately be argued that the opposite is occurring. Such a claim is highlighted by changes to Community Development Employment Projects (CDEP).<sup>124</sup> While it would be foolhardy to claim that CDEP offered the ultimate solution to the issues it was designed to address in Aboriginal communities it should be recognised that many positive outcomes were achieved as a direct result of the implementation of CDEP projects: particularly in remote communities.

Community Development Employment Projects not only provided employment outcomes but also contributed to immeasurable benefits to individuals and communities such as: pride, a sense of achievement, social inclusion, community infrastructure, community capacity building and increased localised community governance. These additional benefits resulted from the projects being implemented based upon community requests designed and derived from community based organisations familiar with local needs and aspirations.<sup>125</sup>

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<sup>124</sup> Community Employment Development Projects (CDEP's) were similar to work for the dole programs. Wages were paid to the participant for the hours worked (usually 20 per week) by the Government (any additional hours were the responsibility of the host employer). Participants were employed under CDEP contracts usually for 6 or 12 months. The aim was to build employment experience, improve the skill base of the participant and provide assistance for the participant to develop self-confidence, a work ethic and to become more employable.

<sup>125</sup> Calma, T., *Social Justice Report*, Human Rights and Equal Opportunity Commission, 2006, p39.

The revoking of CDEP projects, or at least the severe and restrictive alteration of CDEP, was implemented by the Federal Government in swift measure with little evident investigation of the benefits of CDEP to Aboriginal communities. These changes resulted in the mainstreaming of services. The general result was the disconnection to community level support for Aborigines and many Aboriginal community controlled organisations ceased to exist almost overnight. This occurred despite the lack of comprehensive evaluation of the CDEP program and any potential benefits to Aboriginal communities.<sup>126</sup>

A contributing factor in the demise of CDEP was The Council of Australian Governments (COAG) Trials designed to test the newly conceived approaches to the delivery of, so called, 'Indigenous' services. Initial trials were proposed for the 2002-03 period. Despite no realistic completion or evaluation of the trials by 2004 the Federal Government chose to expand and replicate the proposed service delivery model on a national scale. As is evidenced by Tom Calma's statement,

"Even though the trials had neither been completed nor evaluated at the time, in July 2004 the Government chose to replicate this whole of government service delivery model on a nation-wide basis through implementing the new arrangements for the administration of Indigenous affairs."<sup>127</sup>

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<sup>126</sup> Walter, M. and Mooney, G., *Social Determinants of Indigenous Health: Employment and welfare*, Allen & Unwin, 2007, p 160.

<sup>127</sup> Calma, T., *Social Justice Report*, Human Rights and Equal Opportunity Commission, 2006, p49.

As is outlined in the Social Justice Report, 2006, concerns regarding the efficacy, and transparency, 'the absence of monitoring and evaluation' and 'the consequent lack of government accountability' were ever present concerns in regard to the COAG Trials.<sup>128</sup> Utilising the Wadeye COAG Trial as an example the Gray Report highlighted the difficulties in implementing, and indeed, sustaining such approaches to Indigenous service delivery. Additionally, in each of the three priority areas of the Wadeye trial little improvement was achieved and one key priority area was not addressed at all, namely, housing.

The housing and infrastructure Moratorium on homelands and outstations implemented in 2006-7 has had a negative effect on the Aboriginal people affected by the policy. According to Calma it is the Aborigines living in these circumstances who have the greater need for the provision of housing stock.<sup>129</sup> It is interesting to note that Calma points to the level of 'commendable degree of success' in relation to establishing 'economic self sufficiency and social stability' of, and by, the very communities who were affected by the Community Housing and Infrastructure Programs (CHIP) introduction of the Moratorium.<sup>130</sup>

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<sup>128</sup> Calma, T., *Social Justice Report*, Human Rights and Equal Opportunity Commission, 2006, p 51.

<sup>129</sup> Calma, T., *Social Justice Report*, Human Rights and Equal Opportunity Commission, 2006, p 55.

<sup>130</sup> Calma, T., *Social Justice Report*, Human Rights and Equal Opportunity Commission, 2006, p 55.

Assessment of legislation and government policy can result in an assumption that many policies and programs are developed on an ad-hoc basis with the resulting element, in the case of Indigenous policies and programs, of appearing succinctly racist. For example: when faced with evidence of successful Aboriginal governance in small and remote communities (not discounting other Aboriginal groups) which has demonstrated an increased capacity to overcome and address a range of disadvantages most Australians, I feel certain, would assume that government support to those communities would increase. This is too often not the case as is evidenced by the CHIP housing moratorium.

The Nation state of Australia has a moral and ethical responsibility, if not a constitutional responsibility, to Aboriginal citizens to afford them equity and equality. Too often, in this country the reverse happens as a result of ill-conceived policy and legislative decisions: decisions usually not inclusive of Aboriginal advice and input. As is evident even the evaluation of Indigenous programs is minimal and fragmented with little or no input from the Aboriginal people involved. The publication, *Social Determinants of Indigenous Health*, identifies the critical imperative of appropriate and comprehensive evaluation in order to ascertain the efficacy of programs.<sup>131</sup>

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<sup>131</sup> Clapham, K., O’Dea, K., and Chenall, Richard, D., *Social Determinants of Indigenous Health: Interventions and sustainable programs*, 2007, p286.

Recent government approaches to 'empower' Aboriginal people include the introduction of Shared Responsibility Agreements (SRAs). The Aboriginal and Torres Strait Islander Social Justice Commissioner states that SRAs could promote, 'the realization of the right to self-determination' subject to SRA negotiation incorporating specific boundaries. Those boundaries include negotiation with appropriate representatives at local level and no conditional access requirements being imposed.<sup>132</sup> For example, there should be no conditions imposed on access to services for Aboriginal people where those conditions are not imposed on non-aboriginal peoples' access to services.

This boundary should also incorporate the imposition of pre-requisites where no such pre-requisites are imposed on non-aboriginal people. The Commissioner states that SRAs have the **potential** to restrict the enjoyment of human rights by Indigenous peoples' if these impositions occur.

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<sup>132</sup> Calma, T., *Social Justice Report*, Human Rights and Equal Opportunity Commission, 2005, p 139.

In 2005 Tom Calma highlighted the principal behind the concept of SRAs as, potentially, one of inclusive negotiation: a positive principal in relation to Indigenous self-determination in Australia. Also stating that time will tell if SRAs are able to support any level Indigenous self-determination or if they will, collectively, deteriorate into a web of programs that afford no long term positive outcomes.<sup>133</sup> By the time the 2006 report was published the Social Justice Commissioner had garnered enough evidence to be concerned about the ability of Shared Responsibility Agreements to meet and fulfill Aboriginal needs and aspirations.

Of specific importance to this thesis in relation to achieving Indigenous self-determination the following question needs to be posed. Can it be said that all policy development in Australia in relation to Aborigines is consistent with international human rights standards? As Tom Calma states.

'human rights transcends politics and provide Objective standards to which governments Worldwide are accountable.'<sup>134</sup>

Calma recognises the universality of human rights and further identifies that human rights,

'They are the standards of treatment that all individuals and groups, irrespective of their racial or ethnic origins, should receive for the simple reason that we are all members of the human family.'<sup>135</sup>

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<sup>133</sup> Calma, T., *Social Justice Report*, Human Rights and Equal Opportunity Commission, 2005, p 139.

<sup>127</sup> Calma, T. *Social Justice Report*, 2006, HREOC, 2006, p 3.

<sup>135</sup> Calma, T. *Social Justice Report*, 2006, HREOC, 2006, p 3.

Can it be unequivocally claimed that the Federal government adheres to these principles in the development of respective Aboriginal specific policies? An assessment of the degree of involvement of Aborigines in the development of policy and the implementation of those policies is warranted as at least a partial answer to that question. As highlighted in the 2006 Social Justice Report new arrangements implemented from July 2004 included, 'A major thrust of the new arrangements has been *direct engagement* with communities and families.'<sup>136</sup>

This new arrangement ostensibly came into force in response to government concerns that Aboriginal organisations had become 'gatekeepers' which resulted in the subversion of Aboriginal aspirations and priorities.<sup>137</sup> It may well be possible to point to examples where this has been the case. However, difficulties arise in relation to the interaction of two opposing systems and the new process of direct interaction is destined to fail without recognition that any interaction, policy implementation or decision-making process involving Aboriginal people must recognize the distinctiveness of Aboriginal communities and acknowledge that distinctiveness in the design of programs. As Calma succinctly states,

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<sup>136</sup> Calma, T. *Social Justice Report, 2006*, HREOC, 2006, p 87.

<sup>137</sup> Calma, T. *Social Justice Report, 2006*, HREOC, 2006, p 87.

It is my concern that the basic problem remains when it comes to government engagement with Indigenous peoples in Australia: there is still an unwillingness or inability to fully comprehend and respect the distinctive nature of Indigenous societies and cultures. Until this situation changes, even with the best will in the world, policies of 'direct engagement' with Indigenous peoples are unlikely to succeed.<sup>138</sup>

Therefore, underpinning policy changes is the notion that direct involvement with Aboriginal communities will assist in improving health and well-being outcomes but that notion does not incorporate the ideology of respect for cultural difference. Colin Tatz, in 1979, offered a common sense assessment of the nature of such dismissive ideologies in relation to Aboriginal health.

Tatz proffered premises which dispute the veracity of assimilationist policies in regard to Aboriginal health outcomes.<sup>139</sup> With regard to blaming Aboriginal ill-health on Aboriginal incapacity or the clinging to traditional values and culture as negative to health outcomes, Tatz points out that,

'there is no watertight theoretical logic or irrefutable empirical proof that good health is contingent on cultural surrender

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<sup>138</sup> Calma, T. *Social Justice Report, 2006*, HREOC, 2006, p 89.

<sup>139</sup> Tatz, C., *Race Politics in Australia: Aborigines, Politics and the Law*, 1979, p4-5

and consequent  
assimilation.<sup>140</sup>

Tatz supports this view with the recognition that there are examples of culturally different individuals who experience good health and that good health is not, 'reserved and preserved for white, western, Anglo Protestants and Catholics.'<sup>141</sup> Relevant also to this thesis is Tatz's conclusion that in order for Aborigines to experience equality and equity in Mainstream Australia it is essential to exclude, 'whites and white values for the time it will take to realise their immediate aspirations'<sup>142</sup>

Tatz's argument is that by strengthening cultural and group cohesion, attaining 'political and economic strength' is essential to Aborigines contributing to the nation, '*on their own terms*':<sup>143</sup> The intervening three decades in Australian politics attests to these notions being effectively dismissed: particularly in light of more recent instances of assimilation tactics.

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<sup>140</sup> , C., *Race Politics in Australia: Aborigines, Politics and the Law*, 1979, p4.

<sup>141</sup> Tatz, C., *Race Politics in Australia: Aborigines, Politics and the Law*, 1979, p4

<sup>142</sup> Tatz, C., *Race Politics in Australia: Aborigines, Politics and the Law*, 1979, p5.

<sup>143</sup> Tatz, C., *Race Politics in Australia: Aborigines, Politics and the Law*, 1979, p5.

The international community in the form of the Committee on the Elimination of Racial Discrimination (CERD) expressed serious concerns in relation to Australian human rights offenses. The abolition of ATSIC was one of the concerns expressed in the *Concluding observations of the Committee on AUSTRALIA*. Under the Concerns and recommendations point 11 reads as follows,

'The Committee is concerned by the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), the main policy-making body in Aboriginal affairs consisting of elected indigenous (sic)<sup>144</sup> representatives. It is concerned that the establishment of a board of appointed experts to advise the government on indigenous (sic) peoples issues, as well as the transfer of most programmes previously provided by ATSIC and Aboriginal and Torres Strait Islander Service to government departments, will reduce participation of indigenous (sic) peoples in decision making and thus alter the State party's capacity to address the full range of issues relating to indigenous (sic) peoples. (articles 2 and 5).'<sup>145</sup>

This statement is followed by concerns that recognize the divergence of perception and attitude to the amendments of the

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<sup>144</sup> The word 'Indigenous' should be written with a capital 'I'. Use of the word Indigenous in Australia has replaced the word Aborigine in government documents. It is, therefore, a word used to name Aborigines as a distinct group. As a name the use of a capital I is both grammatically correct and idealistically appropriate.

<sup>145</sup> Human Rights and equal Opportunity Commission, *Concluding observations of the Committee on AUSTRALIA, CERD/C/AUS/CO/14*, 2005, p. 2 of 6, (20/12/2006)

Native Title Act, 1998, as representing the 'winding back' of Indigenous rights and protection.<sup>146</sup>

In addition, the Committee's concerns regarding reconciliation are outlined in point 25 of the document where it is stated by the Committee that it,

'is concerned about reports that the State party has rejected most of the recommendations adopted by the Council for Aboriginal Reconciliation in 2000. (article 6)<sup>147</sup>

Currently, Aboriginal Australians abide majority democratic process and seek redress within that system for specific needs. ATSIC represented, at a minimum, a forum for representative democratic governance, if not government. Throughout the recent history of Australia Aboriginal issues have been dealt with in numerous ways from acceptance of Aboriginal land ownership to non-acceptance.

Perspectives on Aboriginal culture have also varied greatly from total disrespect, attempted eradication and willfully ignoring its existence to attempting to subsume Aboriginal culture into mainstream Australian culture. Successive Australian governments

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<sup>146</sup> Human Rights and equal Opportunity Commission, *Concluding observations of the Committee on AUSTRALIA, CERD/C/AUS/CO/14*, 2005, p. 3 of 6, (20/12/2006)

<sup>147</sup> Human Rights and equal Opportunity Commission, *Concluding observations of the Committee on AUSTRALIA, CERD/C/AUS/CO/14*, 2005, p. 5 of 6, (20/12/2006)

have implemented policies that inherently ignore or undermine any potential for true Indigenous self-determination. Integration, assimilation and more recently reconciliation policies have not progressed Indigenous self-determination in Australia.

Self-determination is grounded in the notion of “self” determination not “external” determination or “other” determination. No Australian government has yet been able to discard the notions of protectionism, assimilation and authoritarianism that underpin policy development. Such perspectives offer no real means to achieve Indigenous self-determination. The concepts of assimilation, protection and authoritarianism can never truly promote self-government, economic independence and equal representation for Indigenous Australians.

The Howard government reformed Native Title legislation to the detriment of Aboriginal rights, dismantled the only form of Aboriginal democratic representation, ATSIC, (at least the only form recognised, supported and funded by the Federal Government), severely diminished availability of Community Development Employment Projects (CDEP), introduced policies which disempowered Aborigines by assuming capacity without the provision of appropriate policies to support and encourage Aboriginal agency and capacity in relation to dealing with

government representatives under new service provision guidelines and imposed a moratorium on the provision of housing and infrastructure for one whole year to one of the most severely disadvantaged sectors of Aboriginal communities in this country.

One would be forgiven for thinking this might indeed be an adequate sufficiency of additional imposed disadvantageous policy, nonetheless: the Howard government sought to impose an even more definitively racist program of policies on Northern Territory Aborigines in the form of the Northern Territory intervention.

## **Chapter Six: The Northern Territory Intervention**

The Northern Territory intervention should be viewed in conjunction with changing government ideologies and processes. The Intervention is, if you will, a final blow to Aboriginal human rights couched in several years of progressive intervention legislation and policy development.

These 'developments' include degradation of Lands Rights legislation without adequate consultation, in addition to, reforms to heritage protection, customary law and Aboriginal governance.<sup>148</sup> Media attention in regard to the Northern Territory intervention has, predominantly, focused on Aboriginal incapacity as a justification for the perceived need to invade Northern Territory communities as if the inhabitants were enemies on foreign soil. It is difficult to grapple with the concept of sending the armed forces into Aboriginal communities to, ostensibly, build infrastructure and maintain peace. Media outlets grasped opportunities to define Aboriginal communities as dangerous

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<sup>148</sup> This is not an exhaustive list of the legislative and policy degradation applied to Aboriginal human, social and welfare rights from 2002 – 2009. Further legislative impediments to the achievement of Indigenous self-determination for Aborigines will be more fully discussed in this chapter: as the emerging 'rationale' for intensive policy intervention in the provision of services to Aborigines and Aboriginal communities and the inherent nature of those interventions is investigated.

places for children, citing, prolific incidences of child sexual abuse as motivation for swift and extensive government intervention.

The reality is that the intervention evolved over time with the emerging policy changes underpinned by Howard's government agenda. An agenda that invariably paid little heed to Aboriginal human and social justice rights and aspirations. Having outlined in the previous chapter several years of policy alteration leading up to the eventual implementation of the Northern Territory intervention this chapter will provide an assessment of the outcomes of the Northern Territory intervention (now referred to under the new government as the Closing the Gap NT program). In an attempt to highlight not only the racist nature of the intervention but also the continued imposition of that racist policy despite the already proven inherent failure to address many of the "gaps" in health, wellbeing, life expectancy and education outcomes for the Aboriginal people involved: indeed in some key indicators the intervention has succeeded in widening the gap, not reducing it.

Firstly, let us turn to a brief outline of some of the justifications for the intervention and the resulting legislative changes. The Northern Territory intervention is justified as a response to the issues outlined in the *Little Children are Sacred Report* (Ampe Akelyernemane Meke Mekarle) identifying child sexual abuse concerns in Northern Territory Aboriginal communities.<sup>149</sup> The intervention initially included such legislative imposition as:

1. Alcohol restrictions (without adequate recognition of self-imposed 'dry' communities)
2. Enforced school attendance (even though some communities had no school)
3. Compulsory health checks for all Aboriginal children
4. Acquiring townships by enforced leases
5. Welfare payment quarantining
6. Removal of consideration of customary law in bail and sentencing hearings<sup>150</sup>

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<sup>149</sup> Social Justice Report 2007, Chapter 3, *The Northern Territory 'Emergency Response' intervention – A human rights analysis*, 2007, p1.

<sup>150</sup> Social Justice Report 2007, Chapter 3, *The Northern Territory 'Emergency Response' intervention – A human rights analysis*, 2007, p3.

The principles of the Little Children are sacred report included the following basic principles:

Principle One:

Improve government service provision to Aboriginal people

Principle Two,

Take language and cultural 'world view' seriously

Principle Three,

Engage in effective and ongoing consultation and engagement with Aboriginal communities

Principle Four,

Maintain a local focus and recognise diversity

Principle Five,

Support community based and community owned initiatives

Principle Six,

Recognise and respect Aboriginal law, and empower and respect Aboriginal people

Principle Eight,

Provide adequate and ongoing support and resources<sup>151</sup>

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<sup>151</sup> Social Justice Report 2007, Chapter 3, *The Northern Territory 'Emergency Response' intervention – A human rights analysis*, 2007, p4.

The Federal government response was implemented within six days of the release of the Little Children are Sacred Report. In order to act on the intervention legislative change was required. With swift measure the government introduced the following intervention practices,

Part I: Areas under the Intervention,

Aboriginal land including roads and rivers

Aboriginal community living areas

Town camps

And other areas declared by the Minister for Aboriginal Affairs

Part II,

No sale, consumption or purchase of alcohol in prescribed areas

Part IV,

The compulsory acquisition of leases of 65 Aboriginal communities

Part V

The Minister for Aboriginal Affairs to control activities of community service entities and the power to declare any individual or organization operating in the Northern Territory as a community service entity and the Minister

has complete direction over funding, assets and business structures

Part VII,

Dictates new licensing laws for food provision outlets and the power to acquire the assets of community stores

Part VIII,

Provides for the exclusion of Aborigines from access to a range of State and Commonwealth legislation including part II of the Racial Discrimination Act 1975 (Cth)<sup>152</sup>

In addition to these impositions a number of government agency legislative directions were altered to encompass the parameters of the proposed intervention. Those amendments include Schedule II under Family and Children's services and Indigenous Affairs which relates to the deployment of Australian Federal Police as 'special constables' to the Northern Territory Police Force.

Schedule III grants the Commonwealth legal interest in infrastructure on Aboriginal land if the construction or maintenance is funded by government in excess of \$50,000.

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<sup>152</sup> Social Justice Report 2007, Chapter 3, *The Northern Territory 'Emergency Response' intervention – A human rights analysis*, 2007, p4-6.

Schedule IV severely disrupts the Aboriginal permit system for entry into Aboriginal land and gives decision making powers to the Administrator of the Northern Territory.

Similarly under Centrelink policy and legislation the following alterations came into force, Schedule I: The introduction of an income management scheme which could quarantine 50-100% of welfare payments (this measure also included Aborigines under the jurisdiction of Cape York, Queensland). Schedule II ended all CDEP funding in the Northern Territory.<sup>153</sup>

It is not surprising that serious concerns have been expressed simply in regard to the swift implementation of the intervention. From the time of the release of the Little Children are Sacred report until the legislation was introduced and approved it took only six days to construct and pass the legislation. While concerns with regard to the new legislation abounded one aspect in particular is (aside from the removal of access by Aborigines to Part II of the Anti Discrimination Act, 1975 (Cth)) the reality that there is no access to compensation for the acquisition by government of Aboriginal property.<sup>154</sup> That legislation, which is designed with a total lack of responsibility for any form of compensation, incorporates elements of highly racially

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<sup>153</sup> Social Justice Report 2007, Chapter 3, *The Northern Territory 'Emergency Response' intervention – A human rights analysis*, 2007, p6.

<sup>154</sup> Social Justice Report 2007, Chapter 3, *The Northern Territory 'Emergency Response' intervention – A human rights analysis*, 2007, p7.

discriminatory practice in relation to a specific group. The swift and ill-considered enactment of this legislation highlights the discrimination evident in the actions of government.

The legislation implemented in the intervention is extensive and it is not possible to outline each successive action in this document. What is of interest here is the undermining of Aboriginal human rights and the subsequent effect on Indigenous self-determination aspirations. For Northern Territory Aborigines one must come to the conclusion that their respective rights have been significantly undermined and that self-determination considerations have not entered into government ideology in the process of implementing the Northern Territory intervention.

Essentially, as is consistently pointed out throughout this thesis, it is impossible to ensure Aboriginal social, cultural and spiritual health and wellbeing by utilising measures which undermine and destroy Aboriginal cultural imperatives. The application of non-indigenous expectations without consistent support for capacity building and empowerment at local level is destined to fail.

In response to government intervention many Aborigines, and others, have been vocal in their opposition to the intervention. A number of Aboriginal groups requested United Nations assistance and a delegate from the UN undertook a 12 day visit to Australia to provide a report on the situation.

The United Nations Special Rapporteur on the Right of everyone to the Enjoyment of the Highest attainable standard of Physical and Mental Health, Mr. Anand Grover, gave a speech in Canberra on the 4/12/2009 which highlights grave concerns in regard to the Northern Territory intervention. Mr. Anand, while acknowledging Australia's recent apology to the Stolen Generations and acceptance of the Declaration of the Rights of Indigenous Peoples (DRIPS) stated,

'The Northern Territory Emergency Response (NTER) has unfortunately undermined some of this progress towards reconciliation, as communities describe NTER as paternalistic, disempowering and racially motivated.'<sup>155</sup>

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<sup>155</sup> Grover, A., *United Nations Special Rapporteur on the Rights of Everyone to the Enjoyment of the Highest attainable Standard of Physical and Mental Health*, Speech delivered in Canberra, 04/12/2009, <http://eniar.org/news/UNhealth.html> (12/12/2009)

Mr. Grover further stated that,

'...the NTER failed to meet the basic standards of a rights-based approach to health, such as the development of a transparent plan with clear benchmarks and indicators, participation, the meaningful engagement of communities, etc...'<sup>156</sup>

In addition, Grover also claimed,

'As the intervention initially stood, it was inherently flawed, and some of the measures imposed were in direct breach of Australia's international human rights obligations.'<sup>157</sup>

A national report in July of 2009 had already stated that Aboriginal social and economic status had deteriorated.<sup>158</sup> Given such overwhelming evidence of the failure of the intervention it is difficult to understand why, in the face of such evidence the current Prime Minister, Kevin Rudd, announced recently an extension to the term of the conveniently renamed, Closing the Gap NT program.

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<sup>156</sup> Grover, A., *United Nations Special Rapporteur on the Rights of Everyone to the Enjoyment of the Highest attainable Standard of Physical and Mental Health*, Speech delivered in Canberra, 04/12/2009, <http://eniar.org/news/UNhealth.html> (12/12/2009)

<sup>157</sup> Grover, A., *United Nations Special Rapporteur on the Rights of Everyone to the Enjoyment of the Highest attainable Standard of Physical and Mental Health*, Speech delivered in Canberra, 04/12/2009, <http://eniar.org/news/UNhealth.html> (12/12/2009)

<sup>158</sup> BBC News, *United Nations investigates Australian Rights*, <http://eniar.org/news/un58.html> (10/10/2009) p 1

The evidence that respective Australian governments, regardless of political perspective, consistently and, sadly effectively, deny, diminish and undermine Aboriginal self-determination aspirations exists for the world to see. The perceived difficulties respective Australian governments view as unattainable for Aborigines have been overcome to some degree in other countries. The next chapter briefly investigates some of those initiatives in order to make, necessarily broad, comparisons given the diversity of Indigenous nations and communities.

## Chapter Seven: International Comparisons

The Constitutions' of various nations deal with Indigenous peoples' in many ways, including, in some cases, a complete lack of acknowledgement of their respective existence. Historically, the formulation of the Australian Constitution did not acknowledge Aboriginal Australians and at no time were any Aboriginal persons consulted with regard to the content of the document.

As Lois O'Donoghue pointed out in her address to the conference on the Position of Indigenous Peoples in Constitutions (Canberra, 1993) the Australian Constitution is premised on archaic notions of Terra Nullius and offers no direction with regard to equality for all citizens, no notion of what it means to be Australian and no real sense of how we should exist harmoniously together as a nation.<sup>159</sup>

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<sup>159</sup> O'Donoghue, L., Papers from the Conference on the Position of Indigenous Peoples in Constitutions, Canberra, 1993, Council for Aboriginal Reconciliation.

Many nations have begun the process of re-negotiating and re-writing their constitutions taking account of their respective Indigenous populations. However, Robert Tickner, Minister for Aboriginal Affairs in 1993, outlined the difficulties Australia faced in regard to the potential to re-negotiate our constitution in comparison with other nations such as Canada, the USA and New Zealand. Mr. Tickner pointed out that all of these nations had existing treaties and have been involved in negotiations for some considerable time.<sup>160</sup>

It would seem that such comments merely attempt to excuse the government's inaction and they provide no positive and constructive avenue to progress Aboriginal aims. It is true that the degree of Aboriginal involvement in decision-making processes differs substantially throughout the world. However, the involvement of Aboriginal Australians in domestic decision-making processes should not be affected by that reality. Comparative assessment is a valuable tool in measuring progress against other models but those other models do not and should not be used as a justification for inaction.

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<sup>160</sup> Papers from the Conference on the Position of Indigenous Peoples in Constitutions, Canberra, 1993, Council for Aboriginal Reconciliation.

In Canada the constitution has been re-written to incorporate negotiations with First Nation Peoples, specifically, in regard to matters that may directly affect them.<sup>161</sup> The USA has afforded recognition of First Nation Peoples as domestic nations and, as such, these nations have been afforded negotiating powers by Congress. Although the struggle to achieve this recognition has been fraught with difficulty over-time the circumstances in the USA have now become more equitable for Indigenous people. Significantly, Native American rights stand, at least a chance, of overcoming conflicting non-indigenous rights as each case is judged on merit and as Barkan attests,

‘Today Indian rights are privileged in a way that in the case of a collision between Indian and general private property rights, the merit of the case will determine the outcome, and it is possible that the dispute will result in restitution to the Indian.’<sup>162</sup>

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<sup>161</sup> Havemann, P., *Indigenous Peoples’ Rights in Australia, Canada and New Zealand*, 1999, p 473.

<sup>162</sup> Barkan, E., *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, 2000, p 176.

In New Zealand, the Treaty of Waitangi is viewed by the Maori people as guaranteeing Maori rights and sovereignty. The Treaty is legally effective by virtue of Acts of Parliament and those Acts refer to the principles of the treaty rather than the actual wording.<sup>163</sup> These principles include 'partnership' and 'active protection' and the New Zealand courts and the Waitangi Tribunal work in partnership to ensure that the principles are understood and upheld.<sup>164</sup>

While each of these instances of improved recognition represents progress towards self-determination none of them represent total achievement of Indigenous self-determination aims. They do, however afford legal, moral and ethical power to the respective Indigenous nations in order that they may continue to negotiate fulfilling their particular self-determination aspirations.<sup>165</sup> The major apparent difference between these nations in comparison to Australia is not just that Aboriginal Australians have no treaty but also that Aboriginal Australians are not empowered in any significant way to influence Australian government policy.

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<sup>163</sup> Made in New Zealand – The Treaty of Waitangi, <http://www.treatyofwaitangi.govt.nz/treaty/principles.php> (26/09/2006), p 1 of 3

<sup>164</sup> Made in New Zealand – The Treaty of Waitangi, <http://www.treatyofwaitangi.govt.nz/treaty/principles.php> (26/09/2006), p 2 of 3

<sup>165</sup> Conference paper on the Position of Indigenous Peoples in Constitutions, Canberra, 1993, Council for Aboriginal Reconciliation.

There is no longer any Aboriginal body that represents Aborigines in Australia, save for the appointed Advisory committee, since the demise of ATSIC. There is no constitutional acknowledgement of Aborigines, of Aboriginal capacity or Aboriginal ability to contribute politically. In addition, programs that are developed to assist Aboriginal Australians are consistently paternalistic and, generally, based upon the notion that Aboriginal communities require welfare based solutions due to their inability to attain non-indigenous social standards. Predominantly, these issues stem from the ideology that Indigenous Australians are a minority within the Australian nation rather than a distinct nation of people who have the right to self-government and self-determination based upon pre-existing sovereignty.

Australian governments continue to perpetuate stereotypical myths by designing fix-it programs to address imposed Aboriginal disadvantage and the general view still exists that disadvantage experienced by Aborigines is in some way inherent to Aboriginal peoples. In reality the disadvantage experienced by Aborigines is imposed by non-indigenous structures: disadvantage is not inherent to Indigenous people.

As previously stated, since the 1993 conference, Australia has made no meaningful progression towards accommodating Indigenous self-determination. Respective Australian governments have not been able to overcome institutionalised perspectives that apportion blame, advocate protection or impose band-aid solutions that throw money and welfare services at problems but that rarely afford Aboriginal communities any level of empowerment. Respect for Aboriginal aspirations is minimal, perhaps, predominantly because there are minimal forums for inclusion in decision-making processes which results in policy that cannot take account of Aboriginal perspectives and is therefore destined to fail.

Australian governments continue to measure the success of Aboriginal programs against successful outcomes for non-Indigenous Australians. Invariably the programs do not address any Aboriginal social, spiritual and cultural aspects of Aboriginal well-being. Successes continue to be measured against non-Indigenous outcomes as, in their wisdom our respective governments believe that equality means access to the same service for everyone. History has shown that such an approach creates disadvantage when majority cultures dictate policy those policies often not only don't meet minority needs but often add to current disadvantage. This circumstance is proven in regard to Indigenous minorities.

In relation to Indigenous self-determination in Australia a number of significant events have highlighted Aboriginal Australia's self-determination claims. It has therefore been warranted in the course of this thesis to investigate some of the major events in Australia which resulted in decisions having impact upon Aboriginal communities and Aboriginal Australia as a whole, not to mention the Aboriginal quest for self-determination.

## **Summary**

The articulation of the Rights of Man began the long term process of increasing social justice, human rights and self-determination. The progressive, if gradual, shifting international ideologies eventually recognized the inherent rights to self-determination of Indigenous peoples. The ongoing international discourse defined concepts over time which emerged almost naturally as a defined human right. Notions of self-determination eventually overcame and abolished colonialism and the discourse shifted to discussions of restitution for colonized peoples. This culminated in the growth of recognition that Indigenous self-determination must relate to ensuring the rights of Indigenous peoples and righting some of the wrongs perpetrated throughout colonialist history.

As claimed throughout this thesis, Australian Aborigines face, and have faced for generations, a David and Goliath battle to achieve self-determination. Incorporated in that right are the right to representative government, economic independence and the right to determine all aspects of self-determination from within group affiliation: as opposed to imposed self-determination criteria external to the cultural group. Non-indigenous Australia's answer, historically, has been to impose policies such as assimilation, segregation and child removal.

In recent white Australian history the growing awareness of the collective Australian consciousness from the 1967 referendum resulted in minimal restitution aims and the accompanied attempts at absorbing Aboriginal cultural expression as an element of Australian mainstream cultural identity.

The Aboriginal Tent Embassy philosophically defined and signified ongoing Aboriginal resistance. Diminished Aboriginal land rights eventuated in the form of the Northern Territory Land Rights Act, 1976. The High Court decision contributed legal veracity to Aboriginal land claims and inspired a widespread public debate on Aboriginal rights and aspirations. Despite the eventual political and public opinion voicing opposition to Aboriginal rights in general and Aboriginal lands rights in particular the discourse did include the notion of a retrospective treaty and the inclusion of Aboriginal rights and sovereignty to be incorporated into the Australian constitution.

None of the potential outcomes were to be easily or readily achieved as the incoming Federal Liberal government under John Howard replaced those concepts with the concept of Native Title reform: reforms which diminished, once again, the inherent, and now legal, rights of Aborigines. The introduction of legislation restricting Aboriginal rights to negotiate, imposing a limited timeframe on Aboriginal land claims and denying Aborigines access to claims on significant tracts of traditional land as the new legislation deemed the land to be alienated by virtue of pastoral and mining leases.

The Howard government did not stop at severely undermining land rights. This government also set about dismantling critical services, eroding funding opportunities to Aboriginal organizations and denying Aboriginal capacity to develop and deliver services in a local context.

The abolition of ATSIC, the mainstreaming of Aboriginal specific services and the consequent effect of undermining Aboriginal capacity and agency is swiftly followed by new legislation denying some Aborigines access to anti-discrimination laws in order to enact one of the most appalling government responses in recent history, namely, the Northern Territory Intervention.

The Northern Territory Intervention now referred to as Closing the Gap NT, includes such policies as forced lease back of lands, quarantining of welfare payments and appropriation of infrastructure. After a decade of Federal Coalition leadership the government was defeated by the Rudd Labor Government and many Aboriginal people had hopes that some return to previous Labor party ideology in relation to Aboriginal issues may occur. This has definitely not been the case as Prime Minister Rudd extended the life of the Northern Territory intervention.

Despite the public apology to Aborigines, despite the Australian Nation under the Labor government finally acknowledging acceptance and adherence to the Declaration of the Rights of Indigenous Peoples the domestic reality is the consistent and continued denial of Aboriginal rights and self-determination. It would appear that Australia's acceptance of the Declaration of the Rights of Indigenous People has not included the realisation that Aboriginal Australians are included in the definition of Indigenous peoples.

However, despite proof that the Closing the Gap NT intervention is a failed initiative there appears no desire or intent to end the intervention. Rather the threat has been to extend the policy across the nation. An action which would serve to further degrade and deny the so far limited rights of Aborigines to even basic equity and equality. The Closing the Gap NT intervention poses a tremendous barrier to Indigenous self-determination in Australia. However, Aborigines will continue to fight for recognition of their inherent right to self-determination.

Non-indigenous Australians certainly have the voting power to veto negative policy implementation against Aboriginal communities and it is to be hoped that in the future the average Australian voter will become more informed about the plight of Aborigines and use that power to support the right of Aborigines to claim, define and determine our own self-determination needs.

Indigenous self-determination, then as with all forms of self-determination is unarguably a human right. In Australia Aborigines have consistently and energetically aspired to the wholesale recognition of those rights. Decades of human rights struggles for Aborigines moved into the third century of invasion with only meager advances towards actualising self-determination aspirations. Aborigines can vote, Aborigines are recognized as citizens but Aborigines have to continue to fight for land, resources, representation in government and mention in the Australian constitution.

The right of Aborigines to vote has not been accompanied by educational and health advances and, as a consequence, that right could be seen as little more than a token gesture bought about by the voice of the majority of Australians in the 1967 referendum.

Successive Federal governments have effectively failed to act on the majority opinions of the Australian electorate at the time by affording any additional rights to Aboriginal people in Australia. Federal governments have not entered into the spirit of Indigenous self-determination rights by engaging in a process with Aborigines to negotiate a retrospective treaty which, at a minimum, should acknowledge Aboriginal sovereignty. The right to vote and be counted as a citizen has not assured Aborigines the right to

maintain inalienable custodianship over traditional homelands, to utilise and exercise economic rights to resources on those lands.

In 2009 the Australian nation in the person of Kevin Rudd formally said 'sorry' to Aborigines for past injustices, for taking children and land and the many other significant atrocities Aborigines were forced to bear. Mr. Rudd may as well have said 'sorry' but no self-determination for you lot because we don't recognize your rights and your sovereignty. Your self-determination is contingent on our self-determination, our decisions, and our power over government policy and is subject to our discretion. We are the conquerors of your land and we will continue to subject you to our definition of your self-determination.

How then does a minority culture, a group not politically empowered, battle the harsh reality of respective governments which are only prepared to afford token, empty gestures to Aborigines? How do Aborigines continue to battle for self-determination in the face of such seemingly powerful opposition? The answer lies in continuing the battle for recognition, in never ceding sovereignty and rights, in the support of socially aware non-indigenous Australians and in taking advantage of international support to assist Aborigines to achieve the basic human right to self-determine our own future.

Currently, Australian governments find it difficult to afford Aborigines even the most basic human rights, something as complex as Indigenous self-determination seems like an impossibility in the face of current federal policy and the aspiration to achieve Aboriginal self-determination seems to be fading ever more into the distant future. All I can say is that this Aborigine will never give up on the hope that my people will achieve self-determination in this, our, country.

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## **Acronyms**

Aboriginal and Torres Strait Islander Commission (ATSIC)

Community Housing and Infrastructure Programs (CHIP)

Council of Australian Governments (COAG)

Declaration of the Rights of Indigenous Peoples (DRIPS)

Human Rights and Equal Opportunity Commission (HREOC)

Indigenous Coordination Centre's (ICC)

Northern Territory Emergency Response (NTER)

Office of Indigenous Policy Coordination (OIPC)

Shared Responsibility Agreements (SRAs)

The United Nations Committee for the Eradication of Racism and  
Discrimination (CERD)