'Unfinished business' - the recognition of Aboriginal and Torres Strait Islander Rights

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What I intend to do is to explain the importance of the full recognition of, and respect for, the human rights of Indigenous peoples for the reconciliation process to be meaningful and lasting. Having explained that, I will then ask whether constitutional change is necessary to implement the recognition of the human rights of Indigenous people, and provide some potential options for doing so.

There are probably greater similarities between the current process of reconciliation and any proposals for constitutional reform than many people realise. Both require acceptance of the mainstream society for them to be successful. When the Council for Aboriginal Reconciliation was established, the objective of the Council was described in the 2nd reading speech of the Minister for Aboriginal Affairs as 'the transformation of Aboriginal and non-Aboriginal relations in this country'. It is trite to comment that such a relationship cannot be transformed unilaterally – it requires the participation and agreement of all people who are joined in the relationship, as members of Australian society.

While measuring the acceptance of reconciliation is more difficult and amorphous, the measurement for constitutional reform is quite explicit. It requires the majority of Australians, in a majority of states, to approve such change. Any constitutional change will require that the broader Australian population be convinced of the necessity for the recognition and protection of Indigenous rights.

So, why is there a need for the rights of Indigenous people to be fully recognised today?

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As the preamble of the Universal Declaration of Human Rights states, 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace'. Article 1 goes on to state that 'All human beings are born free and equal in dignity and rights.' The treatment of Indigenous people throughout Australia's history has not respected these basic principles of humanity.

Australia has been colonised, and indeed has flourished on the back of, the foundational myth of the racial inferiority of Indigenous peoples. This myth has been expressed in a variety of ways – most notably through the doctrine of *terra nullius* or 'land belonging to no one'. This doctrine held that Indigenous people were so primitive and 'low in the scale of social organization that their usages and conceptions of rights and duties (were) not to be reconciled with the institutions or legal ideas of civilised society.'[1] The assertion of our 'primitive' nature was the basis of our dispossession.

Since that time, this assumption of racial inferiority of Indigenous people has manifested in other forms – such as paternalistic policies of assimilation, and the devastating practices of forcibly removing Aboriginal and Torres Strait Islander children from their families. Forcible removal policies had at their core the belief that Indigenous culture was inferior to that of the mainstream society, and that the best interests of so called 'part-Aboriginal' children would be served by their removal from their families and separation from their Indigenous identity.

Unfortunately, the remnants of such assumptions continue today. It exists in recently reported comments by federal politicians that Indigenous people remain disadvantaged because they did not invent the wheel; and that they are disinclined towards education and would prefer to go hunting.

It also manifests in the continuing debate over the stolen generations. While there is generally an acknowledgement of the harm caused by these policies, a significant feature of current debate is the assertion that the intention of the policy makers (and those implementing the policies) at the time was 'beneficial' or 'benign'.

The result is that attention has been directed to the bona fides of policy makers of the time, by asking 'did policy makers of the day believe that they were acting in the best interests of Indigenous children?' Policy makers of the time were, of course, operating wholly *within* the then existing cultural norms, which gave expression to the perceived racial inferiority of Indigenous people. The crucial inquiry, therefore, is correctly stated as whether removal policies were premised on a series of assumptions about the cultural inferiority of Indigenous people which predetermined that the best interests of the child, and of the wider society, would best be

[1] *In re Southern Rhodesia* (60) [1919] AC 211, at p233-34, as quoted by Justice Brennan in *Mabo v Queensland (No.2)* (1992) 175 CLR 1.

served by removing the child from their family, community and culture.

The current debate about forcible removal policies has meant that we have been unable to transcend a dialogue that is grounded in the morally wrong beliefs and assumptions that underpinned society at the time the policies were in place. It amounts to a continuation of the cultural assumptions of the past.

The current relationship of Indigenous and non-Indigenous Australians is built on these 'false assumptions'. As social research conducted for the Council for Aboriginal Reconciliation notes:

> "Many Aboriginal and Torres Strait Islander people live day after day with the awareness that they are a dispossessed people. It is shown to them in the racist way in which they perceive they are treated by many non-Indigenous people in a wide variety of circumstances, in the material poverty of their lives and the lives of their extended families and their general communities, and in the way they are discriminated against in employment, in the way they are housed and in their lack of access to health and education services as good as those available to non-Indigenous people.
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> "For many, the sense of dispossession is reinforced by their own experience of being forcibly taken from their families, or by the stories they hear from their families of killings and other sufferings inflicted on them by those they call the invaders or the colonists.
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> "Individuals within the Indigenous community, as might be expected, have reacted in many ways to this sense of dispossession. Some have brushed it aside and got on with their lives. Some have been deeply wounded, and have fought a difficult fight to overcome its effects on them. Some have been permanently damaged. None has escaped untouched, except perhaps individuals who have buried their Aboriginality: yet the fact of denial of part of their heritage itself may be seen as a price they have paid."[2]

It is also reflected in the institutions of society, which reflect the cultures and values of the mainstream. As the Canadian Royal Commission into Aboriginal Peoples put it, 'in this way, the colonization of Aboriginal nations has become an institutionalised reality.'[3]

I want to now pause for a moment to consider the 'populist' counter – viewpoint to what I have said already. This view suggests that the past is over and has nothing to do with the present. It is reflected in views that the current generation of Australians should not be required to accept responsibility for events of the past, or the more extreme argument that 'blaming' the past is a way for Indigenous people to avoid accepting taking responsibility for their own destiny.

I commented on this view of the past in my *Social Justice Report 1999* as

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[2] Saulwick & Associates, and Muller & Associates, *Research into issues related to a document of reconciliation – Report No.2: Indigenous qualitative research*, Council for Aboriginal Reconciliation, Canberra, May 2000, www.reconciliation.org.au, p6.

[3] Royal Commission into Aboriginal Peoples, *Volume 1: Looking forward, looking back*, Minister of Supply and Services, Ottawa 1996, pp607-08.

failing to recognise the broader, systemic nature of Indigenous disadvantage and operating to absent the government from its position of responsibility. Deborah Bird Rose has also critiqued this view of the past as a manipulation of concepts of time, by attempting to create a disjuncture between the past and the present, which is designed to evade responsibility. She says:

> "Whether idealistic or complacent, the idea of disjunction can be deployed to evade responsibility. The logic is to declare the present disjunctive with the past, and then assert that all the unpleasant and demanding social facts of today really belong in the past, or to declare that the present is about to be transcended and that we will soon live in a period that is disjunctive with our 'now'. This practice of 'now'; deflects us away from the present. It allows us to turn our backs on current social facts of pain, damage, destruction and despair that exist in the present through our own agency, but that we will only acknowledge as our past.
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> "For example, when politicians discuss the suffering by Aboriginal people today as a result of past policies of separating families, they assert that our responsibilities do not extend to the people of today because the wrongs exist only in the past. In declaring the past to be disjunctive, we declare it to be something finished and unchangeable, and therefore outside our responsibility."[4]

Such denialism, she warns, can amount to:

> "a facile manipulation of responsibility, which I refer to as 'tunnel vision': what we deplore is held to be almost already in the past, and what we desire is held to be almost already achieved... visions of the future enable us to sidestep present responsibility while understanding ourselves in an imaginary state of future achievement..."[5]

Such an imaginary state of achievement is most clearly shattered by reference to the levels of Indigenous disadvantage in Australian society. One commentator, in deference to the comments of Benjamin Disraeli on the existence of 'two nations in one' in Victorian England – namely, the rich and the poor - has described Australia as 'three nations in one': the rich, the non-Indigenous poor and Indigenous Australia. I am sure that I don't need to familiarise you with the figures of disadvantage across indicators of health and well-being, education, employment, housing, contact with the criminal justice system and so forth. I will repeat just one statistic. At the beginning of the twenty first century, Indigenous life expectancy is approximately 20 years lower than non-Indigenous Australians.

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4 Rose, D.B, 'Hard times: An Australian study' in Neumann, K, Thomas, N, and Ericksen, H (Eds), *op.cit*, p7.

5 *ibid.*

Let us reflect on this figure for a moment.

As the Australian Institute of Health and Welfare notes, this means that the life expectancy of Indigenous Australians is presently the same as that experienced by the non-Indigenous community in the year 1900. At the turn of the twenty-first century Indigenous people have yet to reach a standard that existed for the rest of Australia at the beginning of the twentieth century.

This disadvantage is historically derived. It is the result of dispossession. Of exclusion from mainstream society – it is often forgotten that Indigenous people were excluded from mainstream services until the late 1960s in many instances. As the Centre for Aboriginal Economic Policy have noted, this has created 'a significant legacy of inequality in areas such as education, health, housing and infrastructure'. This has been combined with the effects of recent inclusion: having left Indigenous people in a position unable to compete on equal terms, many Indigenous people have become trapped in poverty through reliance on welfare.

It is also the result of inter-generational poverty – with low income preventing the accumulation of capital and investment by most Indigenous people, carrying poverty forward to the next generation. And it is also reflected in the demographic characteristics of the Indigenous population, which is similar to that of a third world society. The result of this is that the Indigenous population is 'kinked' with an extremely young age structure – the median age for the Indigenous population is 20 years compared to 33 years for the non-Indigenous population. This creates the significant impact that in the next 10-20 years a vast number of Indigenous youth will enter employment age, leaving the very real risk that Indigenous unemployment – already at levels 4-5 times that of the non-Indigenous population – will dramatically increase.[6]

So how do we go about redressing this situation?

There are two key aspects of the past that must be overcome for a renewed relationship, based on true equality and partnership, to be forged in the future. These are redressing the power imbalance that currently exists in Australian society, including through redressing Indigenous disadvantage; and respecting Indigenous cultures, values and traditions. Human rights principles provide us with guidance in how we go about transforming this situation.

Indigenous people, as with every other member of Australian society, should expect no less than the full recognition of and respect for their human rights. Human rights standards constitute *minimum* acceptable standards of behaviour that Australia has committed itself to observe by signing these treaties or to which Australia is bound through our participation as 'good citizens' in the broader international community.

Importantly, in relation to redressing Indigenous disadvantage – for

[6] See Hunter, B and Taylor, J, *The job still ahead – Economic costs of continuing Indigenous employment disparity*, CAEPR, ANU, Canberra 1998.

example - human rights standards makes it explicit that this is not merely something that is desirable, but is a matter of obligation in order to guarantee a free and equal society.

Two human rights standards are central to the discussion today – first, the principle of equality before the law; and second – self-determination and standards of effective participation.

The principle of equality before the law is expressed in the Convention on the Elimination of All Forms of Racial Discrimination as follows:

> "States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law..."[7]

The meaning of this principle is well established in international law.

The essential feature of the principle of equality is the understanding that the 'promotion of equality does not necessitate the rejection of difference.'[8] In his now classic statement of this, Judge Tanaka of the International Court of Justice explained this concept as follows:

> "The principle of equality before the law does not mean the absolute equality, namely the equal treatment of men without regard to individual, concrete circumstances, but it means the relative equality, namely the principle to treat equally what are equally and unequally what are unequal... To treat unequal matters differently according to their inequality is not only permitted but required."[9]

There are two approaches to equality contrasted in this passage. The first is often referred to as the substantive equality model, or the provision of equality *in fact*. This is the approach adopted by Judge Tanaka. This approach takes into account 'individual, concrete circumstances.' It acknowledges that racially specific aspects of discrimination such as socio-economic disadvantage, historical subordination and a failure to recognise cultural difference, must be taken into account in order to redress inequality in fact.[10]

It is an approach that acknowledges, in the words of the International Council on Human Rights Policy, that 'neither the formal declaration of equality nor the formal prohibition of racism or racial discrimination will by themselves eradicate racism, any more than the prohibition of other crimes leads to universal lawful behaviour.'[11]

Such an approach acknowledges, for example, that Indigenous people

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7 CERD, Article 5.

8 Acting Aboriginal and Torres Strait Islander Social Justice Commissioner, *ibid.*, p31.

9 *South West Africa Case* (Second Phase) (1966) Rep 6, pp303-304, 305.

10 Acting Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 1998*, *op.cit*, pp31-32.

11 International Council on Human Rights Policy, *The persistence and mutation of racism*, Versoix, Switzerland 2000, p7.

are disadvantaged in Australian society. In order to achieve equality in fact or in reality, this approach permits differential treatment of Indigenous people in order to redress this disadvantage. For only when this disadvantage is addressed will Indigenous people be equal in society.

The alternative approach – often referred to as formal equality – relies on the notion that all people should be treated identically regardless of their differing circumstances.

As Dr Michael Wooldridge, the Minister for Health and Aged Care, has stated in relation to the delivery of health services to Indigenous Australians:

> "This is, of course, a false view of justice that offers those people who are disadvantaged nothing. Justice does not mean treating everyone the same...
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> "Justice means giving people their due. A fair go means giving people what is their due and Aboriginal people are justly entitled to health care that addresses their needs...
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> "All we are doing is catching up and to characterise Aboriginal people as somehow privileged is false and misleading. To rectify injustice is not to discriminate but is simply to 'set right'."[12]

In adopting a substantive equality or equality in fact approach, international law indicates that there are two types of differential treatment that are 'legitimate' and therefore not discriminatory. These are firstly, actions that constitute 'special measures' and secondly, those which recognise and protect the distinct cultural characteristics of minority groups.

Special measures recognise that the present enjoyment of human rights is determined by the extent to which they have been recognised and protected in the past. Where there has been on-going and systematic discrimination against a particular group, whether it be on the basis of the race, or sex, or religion, for example, there needs to be a period whereby such a group is given a chance to catch up. Otherwise mere formal equality of treatment will result in further entrenchment of the discrimination which such a group has inherited.

By definition, special measures are differential treatment specifically designed to provide targeted assistance to particular disadvantaged groups. Special measures are deliberately designed to differentiate between those who have been historically disadvantaged by discrimination and those who have not.

It is very ironic that many of the attacks that are made on the level of services for Indigenous people are based on a 'false view of justice.' It is argued, for example, that special programs for Aborigines should be abolished because everyone should be treated equally. Of course, such programs often constitute special measures that have been developed precisely because Indigenous people are not equal and have been the subject

[12] The Hon. M Wooldridge, Minister for Health and Aged Care, *Aboriginal health: The ethical challenges*, *op.cit.*, pp2-3.

of discrimination for too long.

It remains a challenge for governments, and bodies such as the Human Rights Commission, to explain the legitimacy of taking steps (or special measures) to redress Indigenous disadvantage.

The case for the withdrawal of special measures is when they have done the job which they were established to do. This is when the cycle of discrimination is broken and the target group is no longer in need of special treatment. However, there is certainly no evidence that Indigenous Australians no longer suffer the effects of past discrimination.

As I said earlier the second type of treatment that is consistent with the principle of equality and is therefore not discriminatory is action that recognises the distinct cultural identity of a minority group. An example of this is native title.

The High Court in *Mabo* uncovered the discriminatory practices against Indigenous Australians that were veiled by the legal fiction of *terra nullius*. As Justice Brennan stated in that case:

> "It would be a curious doctrine to propound today that, when the benefit of the common law was first extended to Her Majesty's indigenous subjects in the Antipodes, its first fruits were to strip them of their right to occupy their ancestral lands. Yet the supposedly barbarian nature of indigenous people provided the common law of England with the justification for denying them their traditional rights and interests in land."[13]

The recognition of native title by the High Court in 1992 was a recognition that law did govern Aboriginal societies when sovereignty was acquired by the British in 1788. In deciding whether to recognise that Indigenous law, the Court considered that it was no longer necessary to find that the Indigenous relationship to land bore a resemblance to those already known to the common law. In fact to require as such would be discriminatory. As Justice Brennan continued:

> "The theory that the indigenous inhabitants of a 'settled' colony had no proprietary interest in the land thus depended on a discriminatory denigration of indigenous inhabitants, their social organisation and customs. As the basis of the theory is false in fact and unacceptable in our society, there is a choice of legal principal to be made in the present case. This Court can either apply the existing authorities and proceed to inquire whether the Meriam people are higher 'in the scale of social organisation' than Australian Aborigines whose claims were 'utterly disregarded' by existing authorities or the Court can overrule the existing authorities, discarding the distinction between inhabited colonies that were terra nullius and those which were not."[14]

The choice in *Mabo* was thus between perpetuating discrimination of the past or in recognising the cultural identity of Indigenous Australians.

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[13] *Mabo* (1992) 175 CLR 1, p39.
[14] *Ibid*, p40.

The Court, consistent with the principle of equality as it exists in international law, chose the latter.

As Justice Peter Gray has noted, *Mabo* 'made this nation officially a legally pluralist one. The common law now recognises, and gives effect to, Indigenous law with respect to land tenure, and possibly, with respect to other aspects of life and death as well.'[15] In this way, the *Mabo* decision – through providing recognition to the validity of Indigenous cultures and law - stands as a turning point in the relationship of Indigenous and non-Indigenous Australians by rejecting the foundational myth of Australia's settlement.

Unfortunately, legislative amendments and clarification in subsequent judicial decisions have greatly diminished the potential of native title since *Mabo*. The quest for certainty (by both the legislature and the courts[16]) has limited its transformative potential by more easily finding extinguishment of native title. But this by no means provides a finalisation of these issues. As Justice Peter Gray notes, the process of native title recognition is:

> "in truth, (an) inquiry... as to whether the non-Indigenous legal system has withdrawn its recognition of those entitlements, because of its creation of interests, or recognition of activities incompatible with the continuing existence of indigenous entitlements. The entitlements continue to exist in Indigenous law, despite any 'extinguishment' or 'impairment'."[17]

Mabo identified the existence of a grave injustice, even if native title has since developed in ways that may ultimately prove incapable of providing appropriate redress.

The second set of human rights standards that are relevant are those of self-determination and effective participation. There are grave misunderstandings in Australian society about the scope of self-determination. It is viewed as a threat to our national cohesiveness and as the basis of Indigenous secession.

These concerns are addressed particularly well by Erica Irene-Daes, until recently the Chairperson of the United Nations Working Group on Indigenous Populations. Ms Daes prepared a commentary on the Draft Declaration on the Rights of Indigenous People in 1994, which Indigenous groups participating in the Working Group still consider to form the basis of Indigenous people's understanding of self-determination, and the basis for negotiation with governments about the recognition of Indigenous people's right to self-determination in the Draft Declaration.

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[15] Gray, P., 'Do the walls have ears? Indigenous title and the courts in Australia' (2000) 5 *AILR* 1, p1.

[16] See for example the reasoning of the High Court in *Fejo v Northern Territory* (1998) 195 CLR 96 and the full Federal Court in *Yarmirr v Northern Territory*[No.2] (1998) 156 ALR 370 that the recognition of native title must not 'fracture the skeletal shell of the legal system' as the basis for not recognising native title as subsisting in certain circumstances and in certain manifestations.

[17] Gray, P., 'Do the walls have ears? Indigenous title and courts in Australia', *op.cit.*, p1.

Ms Daes explains self-determination as follows:

"Once an independent State has been established and recognized, its constituent peoples must try to express their aspirations through the national political system, and not through the creation of new States. This requirement continues unless the national political system becomes so exclusive and non-democratic that it no longer can be said to be "representing the whole people"... Continued government representivity and accountability is therefore a condition for enduring enjoyment of the right of self-determination, and for continued application of the territorial integrity and national unity principles...

"The concept of "self-determination" has accordingly taken on a new meaning in the post-colonial era. Ordinarily, it is the right of the citizens of an existing, independent State to share power democratically. However, a State may sometimes abuse this right of its citizens so grievously and irreparably that the situation is tantamount to classic colonialism, and may have the same legal consequences. The international community and the present writer discourage secession as a remedy for the abuse of fundamental rights, but, as recent events around the world demonstrate, secession cannot be ruled out completely in all cases. The preferred course of action, in every case except the most extreme ones, is to encourage the State in question to share power democratically with all groups, under a constitutional formula that guarantees that the Government is 'effectively representative'."[18]

She notes that:

"With few exceptions, indigenous peoples were never a part of State-building. They did not have an opportunity to participate in designing the modern constitutions of the States in which they live, or to share, in any meaningful way, in national decision-making. In some countries they have been excluded by law or by force, but in many countries that they have been separated by language, poverty, misery, and the prejudices of their non-indigenous neighbours. Whatever the reason, indigenous peoples in most countries have never been, and are not now, full partners in the political process and lack others' ability to use democratic means to defend their fundamental rights and freedoms."[19]

She argues that:

"It would be inadmissible and discriminatory to argue that these peoples do not have the right to self-determination merely because they are indigenous. Such an argument would imply not only that they do not have the right to secede, but also that they do not have the right to demand full democratic partnership. A more logical and useful approach would be to agree, in keeping with the above-mentioned declaration on friendly relations, that indigenous peoples have the right to self-determination, and that this means that the

[18] Daes, Erica-Irene, Discrimination against Indigenous people – Explanatory note concerning the draft declaration on the rights of Indigenous peoples, Un Doc E/CN.4/Sub.2/1993/26/Add.1, 19 July 1993, paras 20-21.

[19] *Ibid*, para 24.

> existing State has the duty to accommodate the aspirations of indigenous peoples through constitutional reforms designed to share power democratically. It also means that indigenous peoples have the duty to try to reach an agreement, in good faith, on sharing power within the existing State, and to exercise their right to self-determination by this means and other peaceful ways, to the extent possible."[20]

Self-determination, properly understood, is about recognizing the appropriate place of Indigenous Australians within Australian society. It imposes duties on Indigenous and non-Indigenous people alike: on Indigenous people to try reach agreement as to participation in the State in good faith; and on the broader community to accommodate the aspirations of Indigenous people into the fabric of society, including through constitutional reform if necessary.

So then, do we need constitutional reform?

In my view yes we do. On two separate occasions in recent years the federal government of Australia – the representative government of all Australians, including Indigenous people – has passed laws that actively discriminate against Indigenous people. These are the native title amendments, and the *Hindmarsh Island Bridge Act* – which removed the protection of the *Aboriginal and Torres Strait Islander Heritage Protection Act* from a particular group of Indigenous people in relation to the building of the controversial Hindmarsh Island bridge. As the Committee on the Elimination of Racial Discrimination noted in March this year, despite the existence of the *Racial Discrimination Act* 1975, there is no entrenched guarantee against racial discrimination in Australia. Governments can override the *RDA*, or empower states and territories to override the principles that it protects. We may yet see a similar overriding of the *Sex Discrimination Act* with proposed laws relating to in vitro fertilization.

That we have a culture that protects rights cannot be upheld against such acts of discrimination. Constitutional protection would greatly enhance the value and sacrosanct nature of rights in Australian social life.

Many options for constitutional reform have been identified here today. The most extensive form of constitutional reform would be the adoption of a bill of rights. Such an approach clearly does not enjoy favour with the current government, though curiously former Liberal Prime Minister Malcolm Fraser has advocated it recently on the basis that it is necessary to provide adequate protection to the human rights of Indigenous Australians.

The recent dialogues between the Australian government and three of the United Nations treaty committees, and the treaty reform process that has been hastened as a result of these dialogues, indicates to us why a bill of rights approach is not favoured by the government. A bill of rights would provide much greater accountability of government to human rights principles.

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[20] *Ibid*, para 25.

Before these committees, the government continually provided domestic political reasons in response to concerns about breaches of human rights principles. Asked why the federal government won't overturn mandatory sentencing, the answer given is that it is a domestic political problem, and it is difficult in a federal system. But human rights treaties and standards provide a different standard of accountability – domestic politics is not sufficient. Indeed Article 50 of the International Covenant on Civil and Political Rights provides that federalism is no excuse for not complying the obligations set out in the treaty.

There is a curious disjunction in the government's approach to treaty reform and their commitment to human rights principles. On the one hand they state that treaty review processes are about improving the UN system and not about the standards which are upheld by that system, to which they remain committed. The logical answer to this is that they domesticate human rights standards through a bill of rights, and thereby reduce the reliance on overseas forms of discussion and debate about the adequacy of the government's approach to human rights. Yet on the other hand, they reject outright the need for a bill of rights. They prefer not to be held accountable, on human rights terms, domestically *or* internationally.

If I take a pragmatic approach, constitutional reform of the magnitude of a bill of rights is unlikely to occur at this stage. So what are some of the preferable alternatives?

In my view, the most preferable approach is a two stage one, that is able to facilitate the full participation of Indigenous people in society. The first stage is the introduction of framework agreements legislation, which provides legislative force to agreements with Indigenous organizations on a local, regional and national level. Having introduced this legislation, and provided appropriate resources for agreement processes to be entered into, I then see the second stage as the amendment of the Constitution along the lines of the current s.105A. This section provides that the Commonwealth may make agreements with the States with respect to the public debts of the States. It further provides that the Federal Parliament has power to legislate any matter contained in the agreement; that such agreements can be varied or rescinded by the parties; and that agreements, and any variations, are to bind all levels of government.

This has the benefit of being much simpler than a bill of rights; of protecting documents of consensus (therefore reflecting both the aspirations of Indigenous people, and being acceptable to the broader community). By approaching such reform in two stages, the mainstream society is able to come to a deeper appreciation of the need for such agreements and to have a more detailed understanding of the issues involved. Put differently, it would be more difficult for an obstructionist government to raise red herrings to derail the process (as they can much easier do with a bill of rights).