

RESISTANCE AND RECONCILIATION (CHAPTER FOUR)

The purpose of this chapter is to investigate:

- human rights, self-determination and autonomy, including social justice and equity
- the relationship of human rights to self-determination and autonomy
- the background to the denial of human rights to Indigenous people, including the effects of dispossession of land, massacres and genocide
- loss of autonomy through the process of colonisation
- traditional Aboriginal and Torres Strait political and legal structures
- the impact of invasion on Indigenous people's legal and political structures
- the impact of demands for self-determination and autonomy by Indigenous people on the broader Australian community
- the establishment of early Indigenous organisations and the types of which now exist (for example, community-based, cultural, employment, medical and legal services)
- the importance of Indigenous people operating their own organisations and enterprises
- the influence of social factors and experiences on Indigenous identity
- the key institutions in the Australian legal and political systems that impact on the rights and freedoms of Indigenous people and communities
- the barriers to Indigenous people and communities accessing political and legal systems
- the current trends in the political and legal arenas in regard to Aboriginal people including the responses of Indigenous and non-Indigenous people.

BACKGROUND MATERIAL AND INTERPRETATION FOR TEACHERS

Human rights

Free and fair elections, free speech, the right to work and the right to live free from discrimination on the basis of sex, race or religion are other examples of the entitlements we call human rights.

Simple definitions of human rights include:

- the recognition and respect of people's dignity
- a set of moral and legal guidelines that promote and protect a recognition of values, identity and the ability to ensure an adequate standard of living
- the basic standards by which we can identify and measure inequality and fairness
- those rights associated with the Universal Declaration of Human Rights.

The term 'human rights' is a relatively new one in history, yet what we nowadays call 'human rights' have always existed. For this reason the United Nations adopted and proclaimed resolution 217 A (III) on 10 December 1948. This resolution is known as the Universal Declaration of Human Rights. Since then it has become the measure by which people judge what human rights are, and thus what constitutes abuses of them <<http://www.un.org/en/documents/udhr/index.shtml>>.

The formal recognition of human rights aims to protect people from injustice and allow everyone to participate in and contribute to society, for example, by having the right to vote. International human rights laws provide a code to live by, regardless of who we are and where we live.

To respect someone's human rights means that you value another person as a fellow human being, rather than judging them on their appearance, background, race, religion, abilities or gender. It is an agreement to treat people equally, fairly and reasonably, regardless of differences.

The Universal Declaration of Human Rights is not a legally binding document. Instead, it operates more as a promise that countries make to each other and their citizens. The agreements (conventions) that stem from the Declaration are legally binding because countries, like Australia, have signed them. In signing the agreements each country guarantees certain rights to people within its borders.

People have human rights even when the laws of their country do not recognise them, or violate them.

Human rights of Indigenous people

Indigenous people enjoy certain human rights specifically linked to their identity. These include rights to maintain and enjoy their culture and language free from discrimination; rights of access to ancestral lands and land relied upon for subsistence; rights to decide their own patterns of development, and rights to autonomy over Indigenous affairs.

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007. It is not a legally binding

instrument under international law. However, the UN describes it as setting 'an important standard for the treatment of indigenous peoples that will undoubtedly be a significant tool towards eliminating human rights violations against the planet's 370 million indigenous people and assisting them in combating discrimination and marginalisation'.

The Declaration does not create new rights. It emphasises the rights of Indigenous people to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations. It also prohibits discrimination against Indigenous people, and promotes their full and effective participation in all matters that concern them, as well as their right to remain distinct and to pursue their own visions of economic and social development. The Declaration was approved after 143 member states voted in favour of it, with eleven abstaining, and four – Australia, Canada, New Zealand and the United States – voting against the text.

Human rights in Australia

Australia is the only western democracy with no comprehensive statement of its citizens' human rights and responsibilities articulated in the constitution or in legislation. However, rights may be found in the Constitution, common law and legislation (acts passed by the Commonwealth Parliament or state or territory Parliaments).

The five explicit rights in the constitution include:

- the right to vote
- protection against acquisition of property on unjust terms
- the right to a trial by jury
- freedom of religion
- prohibition of discrimination on the basis of State of residency

Australia has a national independent statutory body charged with the responsibility of protecting human rights. It is called the Australian Human Rights Commission. The Commission reviews and monitors legislation; conducts public inquiries; investigates and conciliates complaints; provides policy advice, and delivers human rights education to promote greater understanding of human rights issues in Australia.

Social justice and equity

Social justice is what faces you in the morning. It is awakening in a house with adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to school where their education not only equips them for employment but reinforces their knowledge and understanding of their cultural inheritance. It is the prospect of genuine employment and good health: a life of choices and opportunity, free from discrimination.

Mick Dodson, Annual Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 1993

Social justice refers to the concept in which justice is achieved in every part of society. Social justice affords individuals and groups fair treatment, with everyone entitled to the same rights and services.

Rather than providing 'equal opportunity', social justice recognises that applying the same rules to everyone, regardless of disadvantage, can generate unequal results. Social

justice provides equitable outcomes to marginalised groups. It does this by recognising previous disadvantage, as well as the existence of structural barriers embedded in the social, economic and political systems that perpetuate systemic discrimination. Social justice has been difficult to achieve for Aboriginal and Torres Strait Islanders because of a history of colonial racism.

Equality and equity

Social justice is achieved by treating people and groups equitably. Treating everyone equally does not necessarily mean fairness of treatment. Equity describes fairness and justice in outcomes. Equity means providing access to social benefits as well as the ability to exercise basic human and political rights. It means recognising diversity and disadvantage, and directing resources and services towards those most in need, to ensure equal outcomes for all. It ensures factors like gender, age, socioeconomic status, disability, culture, sexual preference and geography are considered when planning, implementing and evaluating a service or program

Social justice for Indigenous Australians

To achieve social justice means that every Australian has the means to make choices about how they live. It also means recognising the distinctive rights that Indigenous Australians hold:

- **the right to a distinct status and culture**, which helps maintain and strengthen the identity and spiritual and cultural practices of Indigenous communities
- **the right to self-determination**, which is a process where Indigenous communities take control of their future and decide how they will address the issues facing them
- **the right to land**, which provides the spiritual and cultural basis of Indigenous communities.

The Aboriginal and Torres Strait Islander and Social Justice Commissioner exercises functions on behalf of the Human Rights Commission in relation to Indigenous Australians' human rights. It also seeks to promote respect and understanding of these rights among the broader Australian community. An important role of the Commissioner is to keep Indigenous issues before the federal Government and the Australian community.

Social Justice Report

The *Social Justice Report* is submitted annually to the Attorney General by the Aboriginal and Torres Strait Islander Social Justice Commissioner. It examines the key human rights issues facing Indigenous Australians and makes recommendations about changes to government policies, programs and laws. It covers issues ranging from self-determination to criminal justice, as well as an annual report card on the reconciliation process.

Human rights, autonomy and self-determination

Self-determination is the action of acting independently; people having substantive power in their own affairs and responsibility for themselves. Indigenous self-determination is based on the idea that Indigenous people themselves are the most appropriate people to determine the needs of their communities, and that they need greater control over their own futures as they seek to keep their identities, cultures and traditions alive.

The right to self-determination is a fundamental right enshrined in the Charter of the United Nations, the International Covenants of Human Rights (which includes the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights). The charter states that 'all peoples have a right to self-determination' and that 'by virtue of that right they are free to determine their political status and to pursue their economic, social and cultural development'.

The importance of the right of self-determination lies in the right to choose. This choice belongs to people and not to states or governments. Refusal of governments to grant the right of self-determination frequently leads to the violation of the human rights of nationally, ethnically, racially or religiously defined population groups.

The exercise of the right to self-determination can result in different outcomes ranging from political autonomy or independence, through to full integration within a state. 'Autonomy' as it is used in these notes is commonly used to mean greater self-government within Australia. Some people consider that autonomy means having more say in decisions about resources in the region. Others concentrate on the separateness of Aboriginal and Torres Strait Islanders as a distinct culture. As an outcome of self-determination, autonomy can therefore be seen as a human right.

Abuse of human rights in Australia

Australian governments have violated the human rights of Indigenous Australians in more than one way. Indigenous Australians have experienced discrimination and inequalities for many years. Much of this discrimination came about through laws set up to prevent Indigenous Australians from participating in society as equals. These laws, practices and attitudes have had economic, social, psychological and political consequences that are still seen today. The violation of Indigenous human rights in Australia's history include dispossession of Indigenous people from their land, which was often accompanied by extreme violence in the early period, and by legislative exclusions more recently; massacres which were part of a larger violent frontier history, and the denial of full citizenship rights which weren't remedied until the 1960s.

Contemporary human rights violation in Australia

Human rights of Indigenous people continue to be abused in Australia today. The UN Committee on the Elimination of all Forms of Racial Discrimination (CERD) exists to monitor and end racial discrimination. It considers reports by governments on racial discrimination in their countries and follows up urgent cases of racial discrimination brought to its notice.

From 1–2 March 2005, the United Nations Committee on the Elimination of Racial Discrimination met with the Australian Government in Geneva to assess the Government's performance of obligations under the convention to eliminate all forms of racial discrimination (CERD).

In particular, the Committee expressed concern about the abolishment of ATSIC; the practical barriers Indigenous peoples face in succeeding in claims for native title; the continuing over-representation of Indigenous people in prisons, and the extreme inequities between Indigenous peoples and others in the areas of employment, housing, health education and income. (www.eniar.org/humanrights.html)

In March 2008, the Human Rights and Equal Opportunity Commission in Australia published the Native Title Report 2007 (http://humanrights.gov.au/social_justice/nt_report/ntreport07/index.html).

The report found that human rights violations of Indigenous peoples in Australia are still occurring. In particular, there are great barriers for Indigenous people claiming native title, and compensation for extinguishment of native title is extremely difficult to obtain. Despite the reports and recommendations of important national inquiries including the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into the Removal of Indigenous Children, Indigenous people continue to be imprisoned at much higher rates than other Australians.

Indigenous fight for human rights

Aboriginal and Torres Strait Islander have never been passive victims. Over time they have adapted their forms of resistance, protest and accommodation to changing circumstances. They have taken part in active resistance, including guerrilla warfare; the withdrawal of their labour (strikes); petitions (Yirrkala bark petition); protests (APA and AAPA); worked within organisations (FCAATSI), and worked within the legal system (native title) and other organisations (RA). Aboriginal resistance to non-Indigenous intrusions on their country and their way of life continues.

LEARNING OUTCOMES

Upon reading the chapter 'Resistance and Reconciliation' and completing the activities in these notes, students should be able to do the following:

- a) evaluate the effects of colonisation on Aboriginal people's autonomy through:
 - the lack of acknowledgement and acceptance by colonists of the autonomous nature of traditional Aboriginal society
 - loss of land and dispersal of people
 - inability to perform roles critical to an autonomous society
 - introduction of, and forced reliance on, welfare.
- b) define and discuss the terms and concepts of 'human rights', 'social justice' and 'equity'
- c) describe key aspects of human rights
- d) understand that there are many different rights that apply to all people
- e) describe and draw conclusions about the issue of denial of human rights to Indigenous Australians
- f) identify ongoing Aboriginal reactions to the denial of human rights
- g) draw conclusions about the importance of human rights for Indigenous autonomy
- h) analyse examples of the ways in which Aboriginal people exercise their autonomy and how these influence their cultural expression
- i) identify, gather and interpret information from a variety of sources, including the internet, about the impact of demands for self-determination on Indigenous Australians
- j) draw conclusions about the links between land and economic independence, and Indigenous self-determination
- k) identify and give reasons for the establishment of the first Aboriginal and Torres Strait Islander community organisations
- l) use a variety of sources, including the internet, to research and describe a variety of Indigenous organisations, including their roles in the struggle for the return of autonomy
- m) identify the factors that have affected the development of Aboriginal and Torres Strait identity in post-invasion Australian society such as:
 - separation of families including the Stolen Generations
 - imposed use of English and loss of languages
- n) evaluate the impact of invasion on Indigenous peoples' legal and political systems
- o) outline key traditional Indigenous cultural structures which maintained social cohesion and harmony.

PRE-READING ACTIVITIES

Teacher-led discussion

Discuss students' understanding of the definitions of human rights, equity and social justice.

Brainstorm a list of basic human rights and compare them with the United Nations declaration.

Questions for class discussion during the reading

Early resistance

- What were some of the ways that commentators in the early days of colonisation described the assaults on Indigenous people?
- Traditionally, what have been the characteristics of Indigenous governance?
- What was the Myall Creek Massacre?
- Who were the native police?
- List some of the methods used to dispossess Indigenous populations (for example, warfare, disease, violence, slavery and religion).
- Why were the Aboriginal Protection Acts set up? How effective were they?

Missions, reserves and stations

- What was the function of the reserves? How effective were they in meeting the aims of their establishment? How do you think today's Indigenous Australians have been impacted by their families having lived on reserves and missions.

The influence of the church

- Why was the government keen to give control of Aboriginal and Torres Strait Islander people to the churches?
- Christianity is strong in the Torres Strait and with some Aboriginal people. How easy is it to maintain religious as well as cultural identities.

Station life

- What was the Pilbara Strike?
- Pastoralists used Aboriginal labour. How do you think they behaved towards the Indigenous people on their land? Can you support your answer with examples?

Activism and representation

Consider what the APAA were fighting for in the 1920s. How much do you think has changed for Indigenous people? Have what they were campaigning for been achieved?

Strikes and protests

- What are some of the strikes mentioned in the book? Why do you think they chose this form of action?

Assimilation

- What was the policy of assimilation trying to achieve?

Referendum

- What did winning the 1967 referendum achieve for Aboriginal people?

Deaths in Custody

- What were the findings of the Deaths in Custody report?
- Why do you think rates of Indigenous deaths in police custody and in prison are so high?

Land Rights

- Why was the Tent Embassy established?
- Why is it called an 'embassy'?
- Has the Tent Embassy been an effective political action? If so, in what way?

Working through organisations

- Name some of the organisations that have represented Indigenous people in the

past. Who established these organisations? Who had control over them?

- What are some of the organisations that Indigenous people are involved with today? How do they differ from those of the past?

Caring for country

- What is the duty of the Northern Land Council? What are some of its responsibilities?
- Name some other Land Councils.

Mabo decision and Native Title

(Note: before reading this section, discuss with students what they know of the Mabo decision)

- Where is Koiki (Eddie) Mabo from?
- What is *terra nullius*? (Students may like to look up dictionary to find literal meaning)
- What is the Native Title Act?
- Name some native title cases you can think of (including both those that Indigenous Australians won and those that have been lost). (You may have heard of them on the news, or through previous studies etc.)
- Has Native Title resolved all land issues for Indigenous communities? Why not? What needs to happen for it to improve?

Bringing them home

- What research does the *Bringing them Home* report cover?
- Why do you think the report was called 'bringing them home'?
- What are some of the consequences of the action of taking children from their families and communities? Who has been affected, and what are some of the ongoing effects?

Treaty

- What is the aim of treaties generally?
- What are some of the reasons a treaty between Indigenous and non-Indigenous Australians hasn't been established?

Reconciliation and Celebration

- What do you think reconciliation means?
- What are some of the things you know have been done to try to achieve reconciliation?
- Who do you think needs to take responsibility for reconciliation?

NAIDOC

- Have you ever attended a NAIDOC event?
- What do you think NAIDOC might mean to Aboriginal and Torres Strait Islander people? How might it make them feel?

The Apology to the Stolen Generations

- What do you remember about The Apology?
- Why did the Apology only occur so recently?

Festivals

- Have you ever been to an Indigenous cultural festival?
- What are some of the festivals mentioned in the book?

Travelling respectfully

- Have you ever visited an Indigenous community? What measures did you take to ensure that you were travelling respectfully?
- What measures does the book suggest taking to ensure that you travel respectfully?
- Why is important to ask permission to enter a community or travel on Indigenous land?
- What do you think is the effect on both Indigenous Australians and non-

Indigenous Australians of acknowledging traditional owners in every day processes such as school assemblies or public events?

ACTIVITIES

Activity 1

Print out the United Nations Declaration of Human Rights
<http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf > or have students find it on the internet.

Students are to read the declaration and then discuss it in pairs or groups. Part of this discussion should involve reference to chapter four of *The Little Red Yellow Black Book*. (If possible, students should have their own copy to consult in groups.) Students are to compare the treatment of Indigenous Australians in Australian history to the Declaration and note any abuses of human rights that they believe have been violated. They should also make note of any human rights abuses that occur today.

Extension activity

www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Read the United Nations Declaration on the Rights of Indigenous Peoples. Using the internet, students should discover why Australia (one of only a few countries) didn't support the Indigenous Declaration on the Rights of Indigenous Peoples? Have the students reflect on how that might make Australia's Aboriginal and Torres Strait Islander people feel.

Activity 2

Students are to read chapter 3 of *Fight for Liberty and Freedom* and explore the impact of black workers from the USA and Jamaica (especially seamen and others on the wharves) on Indigenous Australians.

Students should take note particularly of Fred Maynard's connections with Marcus Garvey and how they influenced the development of Indigenous activism at the time. Discuss this development in class or in groups.

Then, using resources such as the internet and Indigenous-made films (such as the films 'Freedom Ride', by Rachel Perkins and Ned R Lander and 'Tent Embassy' by Frances Peters-Little), students should explore later forms of Indigenous activism such as the 1965 Freedom Ride (based on the action taken in the US as part of the civil rights movement) and the establishment of the Tent Embassy in 1972 (where some young activists established the Black Panther Party of Australia), up to the present day.

As part of the ICT component of the curriculum, students can then demonstrate their findings through the production of a documentary about the history of Indigenous activism in Australia.

Activity 3

As a class, put together a calendar of important dates and reconciliation events for inclusion in the school diary. Students are to research events (from *The Little Red Yellow Black Book*, the internet or the reading they have done for other activities in these notes) and create their own list of events or anniversaries they believe should be included. Together, as a class, the students should then narrow down the list to those dates they think they, and the school, should acknowledge or celebrate.

Important dates that students might consider include:

- Reconciliation week
- NAIDOC week
- National sorry day
- The Coming of the Light
- Invasion day
- Mabo day
- International day of Indigenous peoples
-

Anniversaries that students might consider (not in chronological order):

- Gurindji walk-off
- return of land to the Gurindji people
- first flying of the Aboriginal and Torres Strait Islander flags
- 1976 Aboriginal (Northern Territory) Land Rights Act is passed
- High Court's Mabo decision
- 1967 Referendum
- Uluru is handed back to the traditional owners
- Australian governments apology to the Stolen Generations
- Tiwi people receive title to Tiwi Islands
- Tent Embassy establishment
- Yirrkala people's bark petition presented to the Australian Parliament